

# EDITED BOOK ON HUMAN RIGHTS & STATE OBLIGATIONS

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**Dr. D AARTHI SARAVANAN**  
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INSTITUTE OF LEGAL EDUCATION

# **EDITED BOOK ON HUMAN RIGHTS & STATE OBLIGATIONS**

*A Tiny research of Human Rights & State Obligations*

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## **Editorial Note**

We are thrilled to introduce our latest publication, "Human Rights & State Obligations: An Edited Book," a compelling and timely collection that explores the intricate dynamics between human rights and the responsibilities of states in safeguarding and promoting these fundamental rights. As the editors of this profound volume, we embarked on this journey with the vision of creating a comprehensive resource that not only delves into the theoretical underpinnings of human rights but also examines the practical implications of state obligations. Our aim was to assemble a diverse array of perspectives and expertise to foster nuanced discussions on the challenges and advancements in the realm of human rights and state accountability.

The chapters within "Human Rights & State Obligations" are the culmination of the passionate contributions from eminent scholars, legal experts, activists, and practitioners who have dedicated their careers to the pursuit of human rights and social justice. Each chapter serves as a beacon of knowledge, exploring themes such as the role of international human rights law, state compliance with human rights treaties, the impact of state actions on vulnerable populations, and innovative approaches to address human rights violations. As we curated this volume, we were inspired by the belief that human rights are universal, inherent, and inalienable. We sought to shed light on the challenges faced by states in fulfilling their obligations to protect and uphold these rights, as well as the collective responsibility of society to advocate for meaningful change.

We express our profound gratitude to all the contributors who shared their expertise, experiences, and unwavering dedication to human rights advocacy. Their commitment to advancing knowledge and fostering dialogue has made this endeavor a resounding success. We would also like to extend our appreciation to the publishing team, whose meticulous efforts ensured the cohesiveness and clarity of this book. Most importantly, we extend our gratitude to you, our readers, for choosing "Human Rights & State Obligations: An Edited Book" as a vital source of information and inspiration. We hope that this collection sparks critical reflections, raises awareness, and encourages you to actively engage in promoting human rights and holding states accountable for their obligations. We believe that through knowledge, empathy, and collective action, we can create a world where human rights are universally respected and protected, and where the dignity and well-being of every individual are upheld.





**Mr. Prasanna S**  
**Chairman of Institute of Legal Education**  
**Tamilnadu, India.**

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## **Publisher's Note**

***Dear Reader,***

**W**e are honoured to present our latest publication, "Human Rights & State Obligations: An Edited Book," a comprehensive and thought-provoking collection that delves into the crucial relationship between human rights and the responsibilities of states in upholding and protecting these fundamental rights. As a reputable publisher committed to promoting knowledge and understanding in critical areas of social justice, we are excited to bring you this volume, which features contributions from esteemed scholars, activists, and practitioners in the field of human rights.

"Human Rights & State Obligations" stands as a testament to our commitment to fostering meaningful discussions and raising awareness about the challenges and opportunities in advancing human rights protections globally. The book explores a wide range of topics, including the legal framework of human rights, state responsibilities, international human rights mechanisms, and the impact of state actions on the lives of individuals and communities. The chapters within this book have been meticulously curated to provide readers with well-researched insights, historical context, and contemporary perspectives. The intention is to equip scholars, policymakers, legal practitioners, and concerned citizens with the knowledge and tools needed to advocate for human rights, hold states accountable, and contribute to positive social change.

We express our heartfelt gratitude to all the contributors who have generously shared their expertise and passion for human rights. Their dedication to human rights research and advocacy has contributed immensely to the depth and richness of this volume. We also extend our appreciation to the editorial and production teams whose dedication and expertise have ensured the quality and coherence of this book. Above all, we thank you, our readers, for choosing "Human Rights & State Obligations: An Edited Book" as a valuable resource in your journey to understand and champion human rights. We hope that this collection inspires meaningful conversations, promotes empathetic

understanding, and empowers you to be advocates for justice, equality, and dignity in your communities and beyond. It is our sincere belief that through knowledge, awareness, and collective action, we can work towards creating a world where human rights are universally respected, protected, and upheld.

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# **HUMAN RIGHTS TO WATER IN INDIA - A STUDY**

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### **Abstract**

Water is an essential, inevitable, and top most wanted item for every human being, without water, nothing exists. Water is exclusively available on Earth; hence people can't exist on other planets. Most international, national, and state water commissions and committees say the water issue will cause a third global war. 96.5% of the total water on earth is in Oceans. It also exists in the air as vapour, in rivers and lakes, in ice-caps, in glaciers, and in the ground as soil moisture. Only 2.5% of the total water on earth is fresh water and of this, only 0.3% is in liquid form on the earth's surface. The Union, State governments, and NGOs work to solve India's water problem. Tamil Nadu is a fast-developing Indian state. The right to water is more often expressed within non-legally binding resolutions and declarations. These instruments, both international and regional in scope, accept that fundamental human rights, such as life, health, and well-being are dependent upon the premise that people are guaranteed access to sufficient quality and quantity of water. The concept of Human Rights is founded on the ancient doctrine of natural rights based on natural law. It is understood today has evolved over conditions. The United Nations Organisation has been promoting human rights since its inception. The universal declaration of Human Rights 1948 was proclaimed as a common strand of achievement for all peoples and all nations. Article 21 of the Indian Constitution states the right to life with human dignity. That, the Water provided of Water through equal opportunities is a basic requirement for national advancement, is conceded both by policymakers and society. The human right to water in India is discussed in this article. It assumes that the right is strongly established in both national and international law. Thus, it moves past discussions about the request's existence or its legal standing in favor of a more in-depth analysis of its content. It focuses on India, where the right is broadly recognized but the specifics of the request are not clearly outlined in legal documents. It takes into account some of the aspects of the right that are currently most important from a policy perspective, such as the need to make sure that the right's theoretical universality is matched by its actual realization, the requirement that the state provides the right's essential elements and the requirement to acknowledge that the request also includes a complimentary water component if it is to have an impact on the vast majority of poor people. In this context, these articles detail Water, Water supply management, and Human Rights in India.

**Keywords:** Water, Human rights, Basic water need, International law, State

### **Introduction**

Human rights are rights that are inherent to being human which include the right to life, the security of the person, freedom from torture, freedom of expression, and Human basic need much more. Water resources in India

include information on precipitation, surface and groundwater storage and hydropower potential. India experiences an average precipitation of 1,170 millimeters (46 in) per year, or about 4,000 cubic kilo meters (960 cu mi) of rains annually or about 1,720 cubic meters (61,000 cu ft) of fresh water per person every year. India accounts for 18% of the world population and about 4% of the world's water resources. One of the proposed solutions to solve the country's water woes is the Indian rivers interlinking project. Some 80 percent of its area experiences rains of 750 millimeters (30 in) or more a year. Over the past two decades, there has been a growing discussion about the human right to water. Water is the second most essential element for human survival after air, therefore this is not surprising. Additionally, freshwater is necessary for all species on Earth; therefore discussions of the right to water must take place in a framework that goes much beyond the urgent survival requirements of humans. It has never been disputed that water is essential to maintaining life. However, during the past 20 years, case law, international and state legal documents, and legal frameworks have all emphasized the right to water more and more. On the one hand, this is unexpected given the direct connection between water and life. However, it can be argued that regardless of whether water is legally listed among the recognized rights or not, it is included as a right in every human rights document or bill of rights because of its fundamental connection to life.

It has been argued that the whole idea of utilizing everyone's right to water as a means of achieving their goals is a strategic error. This is true, but it doesn't negate the necessity to engage with the right to water, which in many cases may be the most crucial strategy people may employ in their campaigns. It is vital to consider the various ways in which the right to water can be understood in light of the fact that there is no universally agreed-upon definition that is legally binding. Therefore, even while education research and mainstream policy are increasingly arguing that the right to water does not entail that it should be free, this cannot stop other arguments from being made. First of all, a serious examination of the provisions of the right to water is required in light of the conceptual connection between water, dignity, and life. Second, in many places of the world, paying for water conflicts with cultural and religious beliefs about access to it. Thirdly, in a nation like India, drinking water has virtually been distributed gratis for decades in rural regions. When individuals acknowledge that goods are not incompatible with human rights, it creates a totally different set of issues, particularly in India.

The objectives of this research article are: (1) to identify that the right must not only be universal in theory but also in the practice of its implementation, (2) to trace that the right to water must be based on an understanding of the state having the duty to provide its realization, something which is well established in India but has suffered erosion in recent times, and (3) to discuss that the right to water must be conceived in a way

that not only takes into account the intrinsic link between various water. The methodology adopted for this present study is a descriptive and analytical method that was used to understand the Human rights to Water in India. The present research article is based on a secondary source. The main secondary sources are the Human Rights handbooks related to Water, Relevant Books, Articles published in Journals, Magazines, Newspapers, Reports, Face Book Pages, Twitter, and Official Websites. This study's conclusions about the Human rights to Water in India are presented in this research paper. It not only explains to the readers what has changed in comparison to the past, but it also evaluates how and why the swift adaptation was feasible, as well as the difficulties encountered throughout the shift from the viewpoint of the educator.

### **The General Background of a Right to Water**

This section highlights recent international events relating to the right to water. The next section looks at some of the broad conceptual issues that underlie the sections of this article that are more focused on India.

### **An International agreement on the Right to Water**

International human rights agreements have long recognized that everyone has the right to water. The six main international human rights agreements made during the 1970s can be used to identify the growing acknowledgment of the right in contemporary agreements. Beyond agreements, a number of "soft law" tools attest to the right's existence. The UN General Assembly has made it known that it acknowledges a right to water at least since 1999. Even yet, the UN High Commissioner for Human Rights reported in 2007 that "the dispute is still open as to whether access to safe drinking water and sanitation is a human right," questioning in particular whether it is a derived or self standing right. The Committee on Economic, Social, and Cultural Rights has made an effort to elevate the right to water within the context of the ICESCR by adopting a General Comment in addition to agreement recognition and soft law mechanisms. According to the committee, everyone has the right to "adequate, safe, acceptable, physically accessible, and reasonably priced water." The normative content of the right, which is composed of freedoms and entitlements, is then identified. Overall, it can now be argued that existing legal provisions "contribute to the elevation of the right to water to a norm of international custom" given the many developments that have occurred over the previous few decades. However, this recognition is only at a very general level, and binding international law has not yet definitively determined what the right actually involves.

### **Beyond Agreement, there are the Right Ideas that need more attention**

On the surface, the relationship looks to be acceptable because the right to water is becoming more conceptually acceptable. However, this agreement does not withstand further investigation due to the crucial function that water

plays in all facets of human life, planet life, and development in the broadest sense. Some of the aspects that have generated the most debate are those that are directly or indirectly related to the most significant adjustments in the water sector that have been proposed through reforms in the water sector that aim to view water in all of its manifestations as an economic good. Focusing on access in relation to the right to water does not always have an immediate impact on how the right is fulfilled. According to one of the main authors of the General Comment, the CESCR "adopted a neutral stance on whether private sector engagement was ultimately helpful or negative" and treated privatization as a political topic that they left open. When that the human rights framework does not require any specific manner of service supply, the Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation reaffirmed this stance.

Making citizens pay has not always been assumed to be a given in all circumstances, according to historical trends in various parts of the world. However, discussions in recent years have been more focused on the inevitable rise in prices. This can be partially explained by the prominence of recent policy reforms in the water sector that have placed an emphasis on cost recovery. Since safe water is not a free good, one of the early policy declarations on water sector changes particularly said that this reality "must be widely promoted." The fact that pricing has frequently been determined not to be at odds with a human rights perspective can also be linked to the rising prominence of pricing in a human rights context. The UN Special Rapporteur's assertion that a human rights framework does not mandate the provision of free water and sanitation services reflects this point of view.

Concerns about cost, water rights, and access are related to the main problem of disconnections. The utility's potential to reduce supply in the context of piped water services makes sense from a cost recovery perspective. The South African Constitutional Court did in fact adopt this position when it stated that "the system of pre-paid meter readings was initially introduced only into Soweto, because Soweto was the area where an enormous quantity of water was being distributed, but for which costs were not being recovered." The dichotomy between the constitutional recognition of the right to water in South Africa and the higher judiciary's unwillingness to expand the scope of the right confirms that there are more pressing issues that need to be discussed than just whether the right is generally recognized or whether generalizations about the right are true in all nations.

### **Indian recognition's scope and limitations**

The human right to water is not recognized by the Indian Constitution. However, it has been frequently acknowledged by the judiciary. Thus, the right is firmly established. The actual content and successful realization of the

human right to water in India provide significant problems at this point. In spite of the fact that courts have amply affirmed the right's existence, they have not elaborated much on its specifics. This is reasonable in a way because the courts are not responsible for this. However, the legislature has not risen to the occasion of providing content to the right, and as a result, there are significant gaps in the legal system. The fundamental elements of the right's content are not up for much debate in the Indian context. The idea that the right is universal and includes drinking water demands is one that is easily accepted. Beyond these broad generalizations, there is scant consensus regarding the specifics of the right. In fact, even the universality concept is not always fully applied in practice. To ensure the full and effective realization of the right for everyone, additional interaction with the right's specific content is necessary.

The right has continued to evolve in various settings and directions despite the lack of constitutional status. First, courts have been at the vanguard of a discussion of the human right to water that is explicit, making it clear that it exists under Indian law. Second, a number of states have passed legislation that has given the implementation of the right a broad context. Thirdly, the union government's policy tools have also significantly aided in the realization of rights in rural areas. Significant contributions were made to the creation and enforcement of the human right to water by various state agencies. However, they are insufficient and constrained. The current legislation does not actually focus on the realization of human rights, though it may indirectly contribute to its implementation, and the executive's administrative directions are not long-term markers of the content of the right since they can, and do, change frequently. Neither are the courts' rules consistent or sufficiently precise to provide relief on the ground. The right to water has been interpreted as the right to life on numerous occasions by the Supreme Court and the high courts. Accordingly, the Supreme Court stated in *Subhash Kumar v. State of Bihar* that the "right to life is a basic right under Article 21 of the Constitution and it encompasses the right to the enjoyment of pollution-free water and air for the full enjoyment of life."

According to certain rulings, the Constitution's Article 47 requires the state to "see boosting the level of nutrition and standard of life of its people and improving public health as one of its fundamental tasks." The government was sued in *Hamid Khan v. State of Madhya Pradesh* for failing to take the necessary safeguards to guarantee that the drinking water supplied by hand pumps in Mandla District was free of excessive fluoride. According to the court, the state must "promote the health of the public by supplying unpolluted drinking water" in accordance with Article 47 of the constitution. The judges originally ruled on the state's "principal obligation" before stating that the right to life also applies to the matter.

**Administrative guidelines for rural areas' drinking water supply**

The constrained legislative framework that was mentioned in the previous section relates to state-level legislation. The lack of new legislation at the union level can be partially attributed to the fact that the Constitution does not grant it a special mandate in this area. At the same time, the union has the ability to take the lead and has done so in the past. The drinking water supply has been a topic of policy and political concern for decades, notwithstanding the lack of legislative actions. Because of this, the union administration has made an effort to make a mark in this field via non-legislative techniques, such as programs and schemes backed by financial incentives to persuade states to adhere to specified norms. Rural drinking water supply has been one of the union government's primary intervention areas. Early in the 1970s, the Accelerated Rural Water Supply Programmed (ARWSP), the first significant program, was started. Up until 2009, the ARWSP Guidelines served as the fundamental foundation for promoting the availability of drinking water to every habitation in rural areas.

Despite the overall success of the ARWSP, the government began a thorough process of reforming its water supply policy in the late 1990s as part of broader water policy reforms. Finally, as a result of this, an entirely new set of guidelines known as the National Rural Drinking Water Programmed (NRDWP) was adopted in 2009. The NRDWP is founded on the new water policy principles, which advocate for the government's involvement in the water industry to be significantly diminished. This expands upon the policy framework that was put to the test beginning in 2003 under the Swajaldhara Guidelines environment. The NRDWP's remarkable aspect from the perspective of the human right to water is that it disclaims the right's existence. It's possible that this was just a linguistic error and an oversight. The NRDWP's deliberate omission of human rights wording is, however, supported by a comparison of the two versions, which were released in 2009 and 2010, respectively. According to the 2009 revision, "demand for basic drinking water needs is a fundamental right."

Given that "average per capita availability may not necessarily guarantee secured access to potable drinking water for all sections of the people in the habitation," the NRDWP bases its decision to move from addressing individual needs to those of households. However, it doesn't explain how the change results in increased coverage in a particular household. Recently, it has been apparent that the government does not approve of the new strategy. In particular, the new Rural Drinking Water, Strategic Plan (2011-2022) specifies that the objective is to achieve 7 LPCD by 2022 in addition to returning to a per capita metric. This text represents a significant pivot that confirms the requirement to take individual water demands into account.



### **A legal right to the provision of clean water**

The state has a responsibility to see that human rights are upheld. In fact, while the state is generally responsible for preserving constitutional rights, the state bears the primary responsibility because it alone possesses the institutional and economic means required to enable the fulfillment of the right. States have a multitude of obligations to advance human rights, starting with those imposed by international law. Member nations have pledged to provide free and required elementary education in certain circumstances, such as the right to education. The covenant contains no such level of clarity on water. The African Charter on the Rights and Welfare of the Child, one of the more recent instruments, however, specifies explicitly that states must "guarantee the supply of adequate nutrition and safe drinking water."

This prompted succeeding administrations to at least make an effort to guarantee the availability of water in cities by setting up the appropriate infrastructure to enable people to receive water either for free or at a cost depending on whether they had individual connections at home. Similar to urban areas, the government made an effort to set up the infrastructure, including hand pumps that in the vast majority of situations provided free access to water. Indian courts have ruled that it is the state's responsibility to supply basic water. In reality, there is no other option to the state's provision because requiring users to fund all capital expenditures would result in a general denial of the right to the majority of people. Additionally, the obligation to provide implies that the water supply cannot be interrupted. In fact, under the right to water, it should be against the law to cut off the water supply or restrict access. As previously mentioned, even in England and Wales, where water delivery systems were completely privatized, this conclusion was drawn. Last but not least, the state's obligation to contribute does not entail that it is the sole party involved and accountable. In reality, just because the state has the primary responsibility for ensuring that there is enough clean water available does not relieve anyone else of their responsibility. Therefore, despite the state's obligation to supply, everyone has a responsibility to make sure that no one suffers significantly from a lack of water. This implies that everyone has a responsibility to share both common and private sources of water fairly.

### **Conclusion**

A communications and computer revolution is sweeping the globe. There is renewed interest in reaching out to outer space. International financial markets and industries are increasingly integrated and connected. And efforts are being made to ensure regional and global security. In India, the right to water is widely recognized. Over the past few decades, the higher courts have continuously recognized the right, and no legislation or administrative directive has specifically rejected the right's validity. To ensure that the right is realized for everyone, however, a number of steps still need to

be completed. In addition to the widespread acceptance of the right, relying on the courts alone is insufficient. Even the courts recognize this. As a result, in *Voice of India v. Union of India*, the petitioner sought the provision of free water to all citizens. The Supreme Court bemoaned the fact that "a citizen of our country is not getting clean, potable water even after 60 years." The water supply, however, is largely the responsibility of municipal corporations and other local organizations, therefore it was determined that it was unable to provide assistance on an all-Indian basis.

There is a need for a legislative framework at the state or union level that lays out the overarching guidelines and standards for all parties involved in the provision of drinking water, including, for example, with regard to water quality. The realization of the right to water requires leaving the executive's administrative directives behind. This will guarantee that the fundamental elements of the right are governed by long-term standards set forth in legislation rather than by administrative whim. Thus, it is clear that the formal framework supporting the right to water requires far more attention than it has received thus far. The fulfillment of the right to water will not, however, be guaranteed by the simple acceptance of additional legal frameworks. A vigorous right-to-water movement by members of civil society must go hand in hand with the statutory structure. Although there have already been a number of anti-water privatization initiatives in cities, some of which have had successful results, a more comprehensive right-to-water campaign that includes rural communities has yet to materialize. For example, this additional pressure is required to make sure that people are more knowledgeable about their rights and accountability systems. A number of substantive safeguards that will guarantee that the right is not largely devoid of content for the majority of poor people must serve as the direction for this entire process towards assuring the more effective realization of the right. The majority of actors around the world have come to accept the right to water. At this stage, it is crucial to prevent the right from becoming a meaningless empty shell that has no bearing on the hundreds of millions of people whose fundamental human right to water is now not completely realized.

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# **Women Trafficking In India- A Social Impact**

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## **Abstract**

Human Trafficking means the trading of humans for a particular purpose for example forced labour, sex slavery, and sexual exploitation for commercial purposes. It is not something that evolves suddenly, its origin is in itself a long history. Slavery had been in existence for 1200 years and was considered a common form of everyday life globally. Women are also trafficked into commercial markets to serve as laborers or domestic servants. Kuwait has considered a major center of women trafficked for commercial exploitation, which, like those sent into prostitution, joins recruiters who promise money and a better life. Their passports and immigration papers are frequently seized by their new owners once they reach Kuwait, leaving them completely vulnerable and without legal recourse. Though Kuwait, according to investigations by the United States State Department, is one of the worst centers for trafficking in women, it is far from the only one. As of 2009, 17 countries were listed as Tier 3 by the US State Department, meaning that not only do they suffer high amounts of human trafficking but that the government does not meet minimum standards for eliminating the trade. The present study is a critical analysis of Women Trafficking in India.

**Keywords:** Fundamental Rights, Forced Labours, Women's Trafficking, Protection.

## **Introduction**

Human trafficking in India, although illegal under Indian law, remains a significant problem. People are frequently illegally trafficked through India for commercial sexual exploitation and forced/bonded labor. Although no reliable study of forced and bonded labor has been completed, NGOs estimate this problem affects 20 to 65 million Indians. Men, women, and children are trafficked in India for diverse reasons. Women and girls are trafficked within the country for commercial sexual exploitation and forced marriage, especially in those areas where the sex ratio is highly skewed in favor of men. Men and boys are trafficked for labor and may be sexually exploited by traffickers to serve as gigolos, massage experts, escorts, etc. A significant portion of children are subjected to forced labor as factory workers, domestic servants, beggars, and agriculture workers, and have been used as armed combatants by some terrorist and insurgent groups.

The Indian Constitution specifically bans traffic in persons. Article 23, in the Fundamental Rights section of the constitution, prohibits 'traffic in human beings and other similar forms of forced labor'. Though there is no concrete definition of trafficking, it could be said that trafficking necessarily involves the movement/transportation, of a person utilizing coercion or deceit, and consequent exploitation leading to commercialization. The abusers, including the traffickers, the recruiters, the transporters, the sellers, the buyers, the end-users, etc., exploit the vulnerability of the trafficked person. Trafficking shows a phenomenal increase with globalization. Increasing profit with little or

no risk, organized activities, low priority in law enforcement, etc., aggravate the situation. The income generated by trafficking is comparable to the money generated through trafficking in arms and drugs.

However, the 1400s showed the start or beginning of European slave trading in Africa with the Portuguese transporting people from Africa to Portugal and using them for slavery. In a later period, Britain and many other European nations joined in the practice of European slavery. As some were trafficked to carry out their fulfillment of sexual desire and for sexual purposes, the trafficking carried out was known or recognized by the term 'white slavery'. And for releasing the slaves, an American charity organization of Anti-Slavery International, was launched in the United States and till now it is considered the most successful and influential movement in history. Although combating Human trafficking is always a growing priority for many national governments, due to the absence of a sufficient amount of database regarding the trafficking in a particular country or at a global level, it is still a growing priority that many governments are unable to achieve.

India's efforts to protect victims of trafficking vary from state to state but remain inadequate in many places. Victims of bonded labor are entitled to ₹ 10,000 (US \$185) from the central government for rehabilitation, but this program is unevenly executed across the country. Government authorities do not proactively identify and rescue bonded laborers, so few victims receive this assistance. Although children trafficked for forced labour may be housed in government shelters and are entitled to ₹ 20,000 (\$370), the quality of many of these homes remains poor and the disbursement of rehabilitation funds is sporadic.<sup>[1]</sup>

Some states provide services to victims of bonded labour, but non-governmental organizations provide the majority of protection services to these victims. The central government does not provide protection services to Indian victims trafficked abroad for forced labor or commercial sexual exploitation. Indian diplomatic missions in destination countries may offer temporary shelter to nationals who have been trafficked; once repatriated, however, neither the central government nor most state governments offer any medical, psychological, legal, or reintegration assistance for these victims.

Section 8 of the ITPA permits the arrest of women in prostitution. Although statistics on arrests under Section 8 are not kept, the government and some NGOs report that, through sensitization and training, police officers no longer use this provision of the law; it is unclear whether arrests of women in prostitution under Section 8 have decreased. Because most law enforcement authorities lack formal procedures to identify trafficking victims among women arrested for prostitution; some victims may be arrested and punished for acts committed as a result of being trafficked.

Some foreign victims trafficked to India are not subject to removal. Those who are subject to removal are not offered legal alternatives to removal to countries in which they may face hardship or retribution. NGOs report that some Bengali victims of commercial sexual exploitation are pushed back across the border without protection services. The government also does not repatriate Nepali victims; NGOs primarily perform this function. Many victims decline to testify against their traffickers due to the length of proceedings and fear of retribution by traffickers.

The Ministry of Labour and Employment displays full-page advertisements against child labour in national newspapers at periodic intervals. The government has also instituted pre-departure information sessions for domestic workers migrating abroad on the risks of exploitation. These measures include distinguishing between 'Emigration Check Required' (ECR) and 'Emigration Check Not Required' (ECNR) passports. ECR passport holders must prove to government authorities that they shall not be exploited when traveling abroad if they wish to travel. Many Indian workers pay large sums of money to agents who facilitate their emigration outside the official channels and willingly emigrate despite the risks, drawn by the hope of higher salaries abroad. Therefore, a dream of a better future often lures people abroad, and hence trafficking cannot entirely be prevented. The Government of India launched an anti-human trafficking web portal in February 2014 that they hope will be an effective way for interested parties to share information about this topic. The Salvation Army has a program that provides safe places for children of women who work in the red district in India.

The United Nations defines Human trafficking as a process of recruiting, transporting, or receiving forced labor by the use of threat or force, coercion or giving and receiving payment to give or take control over the forced labor to exploit that person for their satisfaction. Trafficking means illegal trade. Human trafficking means the trading of humans. Trafficking can occur within a country or may involve movement across borders. Women, men, and children are trafficked for a range of purposes, including forced and exploitative labor in factories, farms, and private households, sexual exploitation, and forced marriage. Trafficking affects all regions and most countries of the world. Prostitution is said to be the oldest profession in the world of human beings and is rampant throughout the world.

The development of a definition of trafficking is necessary to combat the problem and be effective in preventing trafficking. Trafficking, in the dictionary, is described as an illegal trade in a commodity & in the case of trafficking in persons, the commodity is human beings.

Art.3, paragraph (a) of the UN Trafficking in Persons Protocol states that trafficking in persons: Shall mean the recruitment, transportation, transfer, harboring, or receipt of persons, employing the threat or use of force or other forms of coercion, abduction, fraud, deception, of the abuse of power or a

position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs.

India is also a destination for women and girls from Nepal and Bangladesh trafficked for commercial sexual exploitation. Nepali children are also trafficked to India for forced labor in circus shows.[citation needed] Indian women are trafficked to the Middle East for commercial sexual exploitation. Indian migrants who migrate willingly every year to the Middle East and Europe for work as domestic servants and low-skilled laborers may also end up part of the human-trafficking industry. In such cases, workers may have been 'recruited' by way of fraudulent recruitment practices that lead them directly into situations of forced labour, including debt bondage; in other cases, high debts incurred to pay recruitment fees to leave them vulnerable to exploitation by unscrupulous employers in the destination countries, where some are subjected to conditions of involuntary servitude, including non-payment of wages, restrictions on movement, unlawful withholding of passports, and physical or sexual abuse.

These girls and women are sourced from Dindigul, Madurai, Tiruchirapalli, and Chengalpattu in TamilNadu, Gaya, Kishanganj, Patna, Katihar, Purnea, Araria, and Madhubani from Bihar, Murshidabad and 24 Parganas in West Bengal, Maharajgunj from UP, Dholpur, Alwar, Tonk from Rajasthan, Mangalore, and Gulbarga and Raichur from Karnataka. These women and girls are supplied to Thailand, Kenya, South Africa, and Middle East countries like Bahrain, Dubai, Oman, Britain, South Korea, and the Philippines. They are forced to work as sex workers undergoing severe exploitation and abuse. These women are the most vulnerable group to contracting HIV infection. Due to unrelenting poverty and lack of unemployment opportunities, there is an increase in the voluntary entry of women into sex work. Trafficking both for commercial sexual exploitation and non-sex-based exploitation is a transnational and complex challenge as it is an organized criminal activity, an extreme form of human rights violation, and an issue of economic empowerment and social justice.

Trafficking in women and children is something that is the most detestable violation of human rights and is considered heinous to the life of people. A lot of crimes are taking place but trading in human misery is ghastly in respect of other crimes taking place. Human trafficking is a complex process during which the victims pass through different stages (recruitment, transportation, exploitation, and disposal) possibly in different countries. Trafficking is the violation of human rights which keeps the persons at the edge of danger or at risk of being exploited. Restriction from movement, deprivation of security



and self-preservation, deprivation of healthcare facilities, and education and banning social restriction, all come under human rights violation.

## **Conclusion**

Human Trafficking is the recruitment, transportation, transfer, harboring, or receipt of people through force, fraud, or deception, intending to exploit them for profit. Men, women, and children of all ages and from all backgrounds can become victims of this crime, which occurs in every region of the world. Women trafficking and its consequences are not only far away and other people's problems. It is a problem of our daily life and happens right here in Winnipeg as well as in almost every other "civilized" city all over the world. Poverty and illiteracy are the main elements constituting the substratum for trafficking. The number of non-governmental organizations working in the field has increased enormously during the last few years. However, the vast majority of them are located in urban centers and very few have grassroots connections. Women trafficking touches every country and countless industries worldwide, and while many individuals and organizations are working globally to combat this problem, it may take time before it is fully realized just how huge this issue is. The situation in the country presents a picture of a lack of cohesion and coordination. Whether it is intra-state trafficking, inter-state trafficking, or trans-border trafficking, the agencies involved in rescue do not seem to have any coordination with the agencies concerned with rehabilitation. The issue of missing women and children has been seen in isolation and was never seen in correlation with trafficking. There is no common platform linking prevention strategies between source and destination areas. The absence of a national coordinating/monitoring agency has been a serious impediment to justice delivery and the protection of human rights. Therefore, to ensure the best interests of the victims, to bring about effective coordination at the national level, and to coordinate preventive strategies, programs and policies, there is also a need for a national nodal agency to combat trafficking

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# **RIGHT TO ADEQUATE HOUSING – WILL IT SURVIVE FINANCIALISATION?**

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## **ABSTRACT**

Right to housing in 21<sup>st</sup> century, instead of being seen as a place for living for the social good, is being viewed as a financial asset. As a result, right to housing is seen less a human right but viewed more as a financial asset and a means of investment. Financialization of housing is at its peak overshadowing the right to adequate housing. As a result, the right to housing is slowly heading towards extinction with little scope of recovery. Extinction of a human right is rare and unusual. Will right to housing survive the rundown of housing as a financial asset is the first immediate question that strikes to the mind of anyone? If not, what are the constraints of restoration? Is it possible to restore its original status? If restoration is not possible, what are the factors constraining its restoration? In view of the chance of its restoration bleak, will the right to housing be compelled to survive in tandem with the process of financialization? Then how effective the right to housing would be as a human right in tandem with financialization? These are some of possible questions, the article aims at answering.

**Keywords:** *Adequate housing, right to housing, Financialization of housing, Housing policies etc.,*

## **I.INTRODUCTION**

Right to adequate housing is a human right globally recognized in several international instruments on human rights. Right to adequate housing is also legal rights recognized in many national jurisdictions as shown below. But the right to housing is slowly heading towards death on account of the over emphasis of financialization of housing sector by the Governments all over. The chapter, in the above context, aims at highlighting the trying times, the right to housing is passing through across countries all over.

### **(i)Right to Housing- Status in International Instruments**

Right to housing earned a salutary place in international jurisprudence and has been given effect to as a human right in major international instruments like the “Universal Declaration of Human Rights”, “International Covenant on Economic, Social and Cultural Rights” (ICESCR) and other international human rights charters like “Convention on the Elimination of All Forms of Discrimination”, “International Covenant on Civil and Political Rights”, “Convention on the Elimination of all Forms of Discrimination Against Women”, “International Convention on the Protection of all Migrant Workers and Members of their Families”, “Convention on the Rights of Child” and “Convention on the Rights of Persons of Disability”, etc., Right to housing has also given effect to in regional human rights instruments like “European Social Charter,” “African Charta on Human and Peoples’ Rights”, “the African Charter on the Rights and Welfare of the Child” and “the American

Convention on Human Rights”. etc., Instruments like “Statute of International Criminal Court” too indirectly acknowledged the right to adequate housing like “Deportation or forcible transfer of population” a crime against humanity and “Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” a war crime. “Convention Relating to the Status of Refugees” and “Geneva Convention Relative to the Protection of Civilian Population” too assured right to housing.

Right to housing referred in the above international instruments is not a mere shelter with a roof but an ‘adequate housing’ which includes “a) security of tenure, b) availability of services, c) affordability, d) habitability, e) accessibility, f) location, and g) cultural adequacy”.<sup>1</sup>

## **(ii) Right to Housing – Status in National law**

Right to housing, though endorsed in the international instruments as a human right as mentioned above, its status, however, differs from jurisdiction to jurisdiction. Legal systems of countries like Spain<sup>2</sup>, Portugal<sup>3</sup>, Belgium<sup>4</sup>, and Slovenia<sup>5</sup>, recognized the right to housing as a constitutional right” whereas legal systems of countries like the USA<sup>6</sup>, UK<sup>7</sup>, Canada<sup>8</sup>, Australia<sup>9</sup> France<sup>10</sup> and Germany<sup>11</sup> recognized the right to housing either as a general right as opposed to a constitutional right or a favor granted by the government.

In India, the Constitution of India, legislations like the Protection of Human Rights Act 1993, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, the Right to Fair Competition and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 and policies and schemes like National Housing Policy(NHP) 1998, National Urban Housing and Habitat Policy 2007, National Slum Policy 2001, Rajiv Awas Yojan 2013, contained direct or indirect references to housing. In addition, Central Government from time to time launched several policies, programmes, and schemes like the Swarna Jayanti Shahari Rozgar Yojana 1997, National Housing Policy 1998, National Slum Development Programme 2001, Valmiki Ambedkar Awas Yojana on housing 2001, the National Urban Housing and Habitat Policy 2007, the Two Million Housing programme 2015 and

<sup>1</sup> General Comment No. 4, The Right to Adequate Housing ,Sixth Session, <https://www.ohchr.org/en/special-procedures/sr-housing/human-right-adequate-housing>

<sup>2</sup> Spanish Constitution, article 47, <https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf>

<sup>3</sup> Portugal Constitution, article 65.1 [https://www.constituteproject.org/constitution/Portugal\\_2005.pdf](https://www.constituteproject.org/constitution/Portugal_2005.pdf)

<sup>4</sup> Belgium Constitution, article 23.3, [https://www.constituteproject.org/constitution/Belgium\\_2014.pdf?lang=en](https://www.constituteproject.org/constitution/Belgium_2014.pdf?lang=en)

<sup>5</sup> Slovenia Constitution, article 78, <https://www.us-rs.si/media/constitution.pdf>

<sup>6</sup> National Law Centre, Right to Housing Fact Sheet in the United States [https://nhlp.org/files/\(2\)%20Right%20to%20Housing%20-%20in%20the%20U.S.pdf](https://nhlp.org/files/(2)%20Right%20to%20Housing%20-%20in%20the%20U.S.pdf)

<sup>7</sup> Homelessness Reduction Act 2017 <https://www.legislation.gov.uk/ukpga/2017/13/section/3/enacted>

<sup>8</sup> National Housing Strategy Act 2019 SC2019, C29 <https://laws-lois.justice.gc.ca/eng/acts/N-11.2/FullText.html>

<sup>9</sup> Housing Support, <https://www.dss.gov.au/housing-support>

<sup>10</sup> Housing Rights Watch, State of Housing Rights France, <https://www.housingrightswatch.org/page/state- housing-rights-5>

<sup>11</sup> Housing Rights Watch, State of Housing Rights Germany, <https://www.housingrightswatch.org/page/state-housing-rights-6>

National Mission on Sustainable Habitat 2021-2030. These policies or programmes or schemes are nowhere explicit on whether housing is an enforceable right, but certainly contained references to housing.

Right to housing, despite being recognized either as a human right or a constitutional right or a legal right, or a favour by the government in legal and policy instruments as explained in the preceding paragraphs, is not as effective as it is intended to be but largely remained unutilized by the large majority of the people for whose benefit it is intended. There is no single reason attributable to underutilization but are multiple and diverse as mentioned in the succeeding paragraphs. Right to housing, instead of being seen as a place for living for the social good, is being viewed as a financial asset. As a result, right to housing in the 21<sup>st</sup> century is seen less a human right but viewed more as a financial asset and a means of investment. As a result, right to housing is facing a serious threat extinction.

Will right to housing survive the rundown of housing as a financial asset is the first immediate question that strikes to the mind of anyone? Is it possible to restore its original status? If restoration is not possible, what are the factors constraining its restoration? Will the right to housing be compelled to survive, keeping in view the chances of restoration bleak, in tandem with the process of financialization? Then how effective, the right to housing would be as a human right? How is right to housing going to walk in tandem with financialization, if right to housing has to coexist with financialization? These are some of possible questions, the article aims at answering.

Right to housing, in spite of definite assurances or references nationally and internationally as mentioned above, largely remains ineffective, unutilized for reasons like practicing of “spatial segregation”, “discrimination”, “abnormal circumstances created by COVID 19”, “denial of housing to indigenous people”, “inadequate recognition of right to housing as part of access to justice”, “inadequate or lack of housing strategies at national level”, “creation of crisis of homelessness”, “lack of adequate housing facilities to persons of disability”, “migration”, “mega-events like holding sports events and fairs”, and “climate change”<sup>12</sup> etc., Right to adequate housing continues to be violated unprecedented and unabated during Russia-Ukraine conflict forcing thousands of families homeless.<sup>13</sup> In India too right to housing largely remains unutilized by majority, for different reasons like “negative role of the judiciary”, “shift in policy”, “homelessness”, “slums and inadequate settlements”, “forced evictions”,

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<sup>12</sup> Special Rapporteur, Right to Adequate Housing, Annual Thematic Reports <https://www.ohchr.org/en/special-procedures/sr-housing/annual-thematic-reports>

<sup>13</sup> Special Rapporteur, Right to Adequate Housing, Protecting the Right to Adequate Housing During and After the Violent Conflict (A77/190 Report July 2022) <https://www.ohchr.org/en/calls-for-input/2022/protecting-right-adequate-housing-during-and-after-violent-conflict>

“natural calamities”, “discrimination against lower caste people”, “development induced displacement”, “landlessness” etc.,<sup>14</sup>

## 2. RAISE OF FINANCIALIZATION OF HOUSING

The right to adequate housing, however, for quite some time has been facing a serious challenge and gradually losing its luster paving way to the idea of financialization of housing for the reasons described above in the preceding paragraph. Financialization of housing involves adoption of financial policies and programmes which are intended of providing finance the cost of housing for individuals and families through sanction of loans or grants for the purpose of buying, taking it on rent, causing it constructed or improvement of it.<sup>15</sup>

Financialization is on prowl across all countries irrespective of the political or social structure, thus compelling the right to housing to meet a slow death. One of the reasons attributable to the impending death of the right to housing is either disfavoring or failure of the present-day governments to provide home to their citizens. Even the most prosperous countries like United States of America and members of OECD could not provide housing to their citizens. Governments all over, instead favored their markets wide open and announced policies that could attract foreign capital and investment allowing real estate investors to take advantage of the need of mankind to live in security. Many major cities world over, turned into “the most attractive destination for residential real estate investments”.<sup>16</sup> Consequently, housing is seen less as a human right for social good but considered more as a “means of accumulation of wealth”. The shift occurred in 20<sup>th</sup> century on account of discarding of activities from the control of the State to the private players which gradually gave way to the financialization of the housing. In addition, factors like “deregulation, liberalization and internationalization too positively contributed to the growth of the financialization of housing. Thus, the idea of financialization of housing quickly gained currency in 21<sup>st</sup> century and is perceived as a key element which plays a pivotal role in the transformation of a country and also seen as a tool for promoting access to adequate housing. Housing policies which are launched in 21<sup>st</sup> century have been employed or used for promoting ownership with the belief that access to adequate housing on ownership basis would be achievable if housing market is appropriately planned and enforced with “the necessary supporting legal and institutional framework,

<sup>14</sup> Quoted by Miloon Kothari et al, The Human right to Adequate Housing and Land (National Human Rights Commission, New Delhi 2006) 44. <https://nhrc.nic.in/sites/default/files/Housing.pdf>

<sup>15</sup> Forwarding Note Secretary General to General Assembly along with the Report of the Rapporteur, Right to Adequate Housing, A/67/286, 10 August 2012 <https://www.ohchr.org/sites/default/files/Documents/Issues/Housing/A-67-286.pdf>

<sup>16</sup> Emily, Mullin, The Financialization of Housing in the United States: How Companies Impact the Right to adequate Housing <https://theowp.org/reports/the-financialization-of-housing-in-the-united-states-how-companies-impact-the-right-to-adequate-housing/>



is capable of ensuring access to adequate and affordable homeownership for all”.<sup>17</sup>

As a result, housing is viewed more as a saleable commodity and a sign of “accumulation of wealth” and as a “good and valuable security under financial instruments” and viewed less as basic human right. The shift in focus from viewing right to housing as a basic human right to a saleable commodity is clearly noticeable. The shift has been taken note by the United Nations Human Rights Council (HRC). The HRC also examined the possible effect of the abovementioned shift in focus on the enjoyment of the right to adequate housing as a human right and accordingly “recommended an appropriate human rights framework for States to address the above issues and issues of similar nature”.<sup>18</sup>

### **(i) Financialization and United Kingdom**

Financialization is not a new phenomenon to the economy of the United Kingdom. UK’s economy has been witnessing financialization for the last four or five decades on account of the increasing role of the “financial markets, financial motives, financial actors and financial institutions”. Social housing too has been influenced by the bigger role to the financial markets and financial institutions etc., Two major factors responsible for this transformation of social housing into increased financial activity include (1) financial deregulation and (2) privatization of social housing. This made the housing prices in UK go high bringing capital gains for landlords and homeowners; while making housing rents go high for those staying or residing in private rented homes. Thus, the affordability of social housing in UK fell to financialization as a victim which led to the “financial instability, inter-generational inequality and regional and wealth inequality” leaving many families to live inadequate housing’ while others forced out of areas subject to gentrification on account of rising rents. Increased role to financial markets and financial institutions also has influenced outside of the cities even, leading to disparity between the house prices in the cities and those other parts. The idea of financialization has its beginning in the policies adopted by the successive governments since 1980 introducing major changes both in social housing and financial systems. Consumer lending also increased during this period through easy credits to households through mortgage lending. Another significant factor responsible for the growth of financialization is the introduction of right to buy scheme under which the middle- and working-class people can buy their house from the State. Besides, mortgage lending and securitization became important business models for international banks which entrenched the link between the social housing and finance.<sup>19</sup> All the factors, as is evident from the above

<sup>17</sup> Ibid.

<sup>18</sup> Forwarding Note by the Secretary General to the General Assembly, Report of the Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of living and on the right to non-discrimination, A/77/190, 19 July 2022.

<sup>19</sup> Grace Blakeley, Financialization, Real Estate and COVID 19(*Community Development Journal*, Volume 56, Issue 1, January 2021) <https://academic.oup.com/cdj/article/56/1/79/5942922>

are cumulatively responsible for the transformation of social housing into a financial asset.

### **(ii) Financialization & United States of America**

US economy like that of UK has also been influenced by financialization. Federal Government resorted to financialization on account of its failure to provide affordable housing to its citizens. Federal governments, as an alternative, favoured open market system and adopted policies that could attract global capital and foreign investment providing leeway to real estate private investors. Homelessness is a major issue in United States of America in spite of its affluence. Homelessness is prevalent in cities like California, Boston, New York City and Washington DC. Global financial crisis of 2008 exasperated the intensity of homelessness. These circumstances made the US governments to favour open market system and adopt policies that could attract private real estate investors. As a result, two corporates namely, Blackstone and Invitation Homes took advantage of the situation and increased their dominance in the residential real estate market and could expand their housing market to North America, Europe, Asia and Latin America. These two corporates changed several homes into leased properties, but the entry of these two corporates changed the residential real estate market of America.<sup>20</sup>

### **(iii) Financialization & Commonwealth of Australia**

The policies and practices of Australia, like that of UK and USA favoured financialization of housing for the purpose of creation of wealth. Successive governments of Australia favoured financialization of housing through subsidized housing investment or through tax incentives etc., Financialization, it is believed, made the Australians to view the houses as a place to park and grow capital rather a place to live in and raise a family. Financialization brings benefits more, both to the owner-occupiers and house investors and are among the wealthiest lot of Australians or figuring among the people with higher incomes.<sup>21</sup>

### **(iv) Financialization & Canada**

Canada is no exception to the trend of the financialization of housing. It is believed that financialization of housing is one of the contributing factors of the raise in the housing prices which impacted the affordability and access. There are several contributing factors prevalent in Canada influencing financialization. These include “housing affordability and security of tenure”, including “rising of house prices”, “falling interest rates”, “mortgage securitization”, “long-term decline in purpose-built rentals and social housing”, and “the rise of retail and institutional investors in rental markets”;

<sup>20</sup> Supra note 16.

<sup>21</sup> Dallas Rogers, Explainer: The Financialization of Housing and What can be done about it (The Conversation 2017) <https://theconversation.com/explainer-the-financialisation-of-housing-and-what-can-be-done-about-it-73767>

these contributing factors clearly show housing affordability and access has been affected preventing several individuals in Canada from accessing safe and affordable homes. Among them, lone-parent households, visible minorities, Indigenous peoples, those with long-term disabilities and low-income families are disproportionately impacted by these changes.<sup>22</sup>

### **(v) Financialization- Europe**

The origin of social housing in Europe goes back to the industrial revolution. New conceptions are coming up in various other parts of Europe demanding the reforms in the housing sector.

#### **(a) Financialization- France**

In France, keeping in tune with the general trend, several reforms, like “withdrawal of the State from the financing of social housing”, “attack on the Livret-A”, “sale of low rent housing”, “refocusing of allocations on very social demand”, “reform of the statutes” etc., have been initiated in recent years.<sup>23</sup>

#### **(b) Financialization-Germany**

In Germany too, like other European countries, focus in all fields including housing, shifted from “use value” (i.e. used as a “place to live or a social reproduction”) to “exchange value” (i.e. “potential value generated from its trading”). Besides, the above shift, the entry of financial actors like “banks, financial institutions, private investors, financial mentality and practices” too considerably changed housing market in Germany. The private investors as financial actors of financialization brought huge amounts of housing stock which included “privatized social housing, subsidized rental market which led to the process of privatization of welfare state”. Financialization of housing in Germany, since the global economic crisis in 2008, underwent sea change. Besides, private and municipal housing companies divested their housing portfolios and paid off much of the municipal debt or to raise shareholder value. This led to an increase in the sale transactions between 1999-2011 to 1.4 million units”.<sup>24</sup>

### **(vi) Financialization - India**

The Central Government of India, with a view to provide affordable housing from time to time launched several policies, programs, schemes like the Swarna Jayanti Shahakari Rozgar Yojana 1997, National Housing Policy 1998, National Slum Development Program 2001, National Urban Housing and Habitat Policy 2007, the Two Million Housing Program 2015 and Valmiki

<sup>22</sup> Centre for Social Innovation, Financialization of Housing: A Social Innovation Approach to a Better Housing system (Housing Lab Report, December 2021) <https://sicanada.org/offering/financialization-and-housing/>

<sup>23</sup> Jean-Pierre Troche, Financialization and Questioning of Social Housing in France and in Europe (2012) [https://www.citego.org/bdf\\_fiche-document-2411\\_en.html](https://www.citego.org/bdf_fiche-document-2411_en.html)

<sup>24</sup> Marco Copercini, Actors of Financialization in the German Housing System, (Geography Notebooks 2019) [https://www.academia.edu/39854274/Actors\\_of\\_financialization\\_in\\_the\\_German\\_housing\\_system](https://www.academia.edu/39854274/Actors_of_financialization_in_the_German_housing_system)

Ambedkar Awas Yojana on housing 2001 and National Mission on Sustainable Habitat 2021-2030. The successive governments, though set for themselves ambitious targets for providing adequate housing, under various schemes and programs mentioned above, are unable to meet those targets. The failure compelled the government to make the housing sector wide open to the investors and developers to construct houses for those who can afford to buy. Thus, entry into the housing sector became easy for builders, developers, investors. Liberalization is the beginning of the process of financialization of housing. Financialization began as a part of the liberalization taken up by the government in 1991. India, post-liberalization, witnessed uncontrolled financialization of housing. The result is that housing came to be treated an asset by class in itself enabling the rich investors to acquire housing for the purpose of investment and making housing to a large number of middle- and lower-class people unaffordable.<sup>25</sup>

But the policies like Jawaharlal Nehru National Urban Renewal Mission homelessness reflect change in the policy. It promotes foreign direct investment (FDI) in the housing by facilitating easy acquisition of land by private developers depriving the landless or other low-income groups of their interest in the land. The repeal of “Urban (Ceiling and Regulation) Act 1976” too made easy for the private land developers to acquire large chunks of land at low prices for developing it for the purpose of commercial housing. Economic globalization and privatization of basic services too impacted the right to housing by shifting focus towards globalization.<sup>26</sup>

Financialization of housing, though brings benefits as above, has a flip side of it. It is believed that market-based housing finance is likely to lead mount up of “real estate prices and a decrease in the affordability”. Other consequences of financialization include “steep reduction for the construction of adequate housing in the budget allocation, for example, reduction of budget allocation for construction of houses to \$18 billion in 1983 from t \$83 billion in 1978 in 1983 and between 1996 and 2001. The result is “less supply and more demand resulting long wait lists accommodating a large of number of people in inadequate housing conditions”. The decline in state investment in public housing also led to the shrinking of private rental investment market. The decline forced the low-

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<sup>25</sup> Miloon Kothari, *Supra* note 14. The City Development Authority in many cities though set for themselves ambitious targets of creating affordable dwelling units for the urban poor, abysmally fell short of such argets, for example, the Delhi Development Authority (DDA) could only manage to meet only thirty-five per cent of the target set for itself.

Similarly, the National Housing Policy 1988 though launched ambitiously with a target of construction of 2 million houses every year for the “low-income groups, economically weaker sections, Dalits, scheduled caste and tribes and women”, the target set, in reality was never achieved.

National Policy on Resettlement and Habitation 2004 too failed to “address human rights implications of involuntary displacement”.

“Housing for all” under National Urban Housing and Habitat Policy 2005 is confined only on to paper and remained as an allusion.

<sup>26</sup> Milloon Kothari, *supra* note 14.

income groups to necessarily to rely upon housing finance without any alternative option.<sup>27</sup>

### 3.CONCLUSION

It is clear from the preceding paragraphs that the idea of financialization of housing gained currency in the 21<sup>st</sup> century and entrenched itself as a force which cannot be discounted al beit with the support of national governments as seen above in the case of the United Kingdom, United States of America, Canada, Australia, Germany, France and India and also on account of change in the perception of people treating housing a financial asset rather a place for living. It is evident from the preceding paragraphs that United Kingdom for quite some time now, has been experiencing financialization for reasons of increased role of financial markets, financial motives etc., Another factor which actively contributed to the idea of financialization of housing is introduction of “right to buy scheme” which enables the middle and working class to buy a house from the State. In USA, the intensity of the homelessness created by global financial crisis in 2008, the successive US government favoured open market system and adopted the housing policies that attracted private equity as mentioned above. In Australia, successive governments of Australia favoured financialization of housing through subsidized housing investment or through tax incentives. France in recent years embarked on introducing several reforms like “withdrawal of the State from the financing of social housing, sale of low rent housing, refocusing of allocations on very social demand, reform of statutes” etc., In Germany too, focus shifted from “use value” to “exchange value”. So is the case with Canada. In India, the government seemed to have been indulged in double speak; on one hand, the Government goes on launching from time-to-time as it is evident from the preceding paragraphs above, one or other new housing programs without any serious inclination of implementing them and on other hand, seemed indulged in encouraging financialization of housing by allotting large tracts of government land to private builders at cheaper prices for the construction of houses on ownership basis. It is obvious that financialization housing has gone a length too far, apparently with the support of the government world over, from where no point of return is possible. The impact of financialization is so powerful, rapid and overwhelming which no amount of resistance or effort will be able reverse the current trend of financialization.

It is likely that undue importance to financialization “widens the gap between rich and poor thereby leads to socioeconomic inequality”. The result is that people across all countries are facing the homelessness. Homelessness is a global crisis. Keeping in view the massive adverse impact does homelessness create special rapporteur preferred the implementation

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<sup>27</sup> Special Rapporteur, Right to Adequate Housing, Annual Thematic Reports, supra note 12.

of right to housing as a human right over financialization. The Special Rapporteur suggested that the right to housing is to be guaranteed as a fundamental human right with dignity. The Special Rapporteur also suggested that right to housing should be treated as part and parcel of right to life with “meaningful participation in the design, implementation and monitoring of housing policies and decisions”; besides the Special Rapporteur also suggested the “elimination of homelessness in the shortest possible time and stopping of the criminalization of persons living in homelessness”; The Special Rapporteur further suggested “prohibition and prevention of forced evictions whenever possible”; “upgrading informal settlements incorporating a human rights-based approach”; Special Rapporteur’s suggestions further include “addressing discrimination and ensure equality”; “adequate housing for migrants and internally displaced persons”; “engaging international cooperation to ensure the realization of the right to adequate housing with effective monitoring” and “accountability mechanisms” and “access to justice for all aspects of the right to housing”.

In the circumstances explained above, giving effect to right to housing requires a massive effort requiring coordination and engagement internationally of private players like civil societies, private builders and developers on one side and government representatives on the side. The Governments also must bear in mind that creating adequate housing to their population is their duty which cannot be shifted to private actors under the pretext they are ready to build and sell the houses and simply for the reason people are showing interest to acquire houses built for the reason they can afford to buy or acquire on rent leaving behind majority homeless. Right to Housing, keeping in view the rapid financialization that is currently taking place world over, will be able to survive only when governments all over, stop actively supporting financialization and start treating housing as space needed for the family to live in dignity. This change in perception really works wonders for the poor and homeless, but change in perception seems bleak.



# **RIGHT TO EDUCATION OF SCHEDULED TRIBES IN INDIA – A STUDY**

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**Abstract**

Education aims to bring out a person's innate traits so they can fully develop as a person. Accordingly, it has been defined as the act or art of fostering an individual's diverse physical, intellectual, artistic, and moral qualities. a Scheduled Tribe. The root causes of their educational exclusion as well as their social and economic history are likewise glaringly different. The primary sector employed about 87 percent of the principal employees from these localities. Compared to the national average of 74.04 percent, Scheduled Tribes have a literacy rate of about 47 percent. Women from Scheduled Tribes make up more than 75% of this group. The cumulative effect has, not surprisingly, resulted in a decrease in the percentage of Scheduled Tribes below the poverty line. With particular attention to the Right to Education Act of 2010, the study aims to investigate the current situation of education and the understanding of disadvantaged groups regarding the right to education as a fundamental human right.

**Key Words:** Marginalization, Right to Education Act of 2010, Scheduled Tribe, Economic

**INTRODUCTION**

Education is a fundamental human right and essential for the exercise of all other human rights. It promotes individual freedom and empowerment and yields important development benefits. Education is a powerful tool by which economically and socially marginalized adults and children can lift themselves out of poverty and participate fully as citizens. Yet millions of children and adults remain deprived of educational opportunities, many as a result of poverty. Education seeks to unfold the latent qualities of a person, thereby giving full development to the individual. As such, it has been described as the act or art of developing, or creating, or cultivating the various physical intellectual, aesthetic and moral faculties of the individual. In India, the total literacy rate is 65.38%. The male literacy rate is 75.85% and the female literacy rate is 54.16%. The literacy rate in West Bengal is 69.22 %, with the male literacy rate is 77.58% and the female literacy rate is 60.22%. The literacy rate of Scheduled Tribes in India is 59.17% for males and 34.76% for females (census of India, 2002). Scheduled Tribes (ST) are among the most socially and educationally disadvantaged groups in India. Scheduled Tribes and mostly women of the two communities have different histories of social and economic deprivation, and the underlying causes of their educational marginalization are also strikingly distinct. The study intends to explore the state of education and the awareness of disadvantaged groups towards the right to education as a fundamental human right with special reference to the Right to Education Act 2010. After reviewing the literature, it is noted that though different research works have been carried out on access to education

or oppression of the caste and tribe and so on, the idea to study the state of education, gender discrimination and more importantly the awareness about right to education as a fundamental human right is not addressed fully. This may be due to the fact that the The right to Education Act is quite a new phenomenon and thus not has been addressed as it should. The present study is analytical. It is constructed through the analysis of secondary data and the history of the educational policies and acts in India. Published work of authors, documents of government policies, reports of Ministry of Human Resource Development, and reports of United Nations, UNESCO, and Census of India comprised the secondary data.

### FACTORS AFFECTING DISPARITY IN EDUCATION

The factors impeding education among indigenous the community can be categorized as institutional and no institutional.

### LANGUAGE OF INSTRUCTION

- ❖ Medium of teaching that is English is a foreign language for indigenous children.
- ❖ Unable to fully comprehend classroom teaching and Activities or understand the texts properly.

**Table 1.** Educational disparity between ST/ SC and general population in India.

Year	Scheduled caste			Scheduled tribe			General		
	Male	Fema le	Perso ns	Mal e	Fema le	Perso ns	Mal e	Fema le	Persons
1961	16.96	3.29	10.27	13.83	3.16	8.53	40.40	15.35	28.30
1971	22.36	6.44	14.67	17.63	4.85	11.30	45.96	21.97	34.45
1981	31.12	10.93	21.38	24.52	8.04	16.35	56.38	29.76	43.57
1991	49.91	23.76	37.41	40.65	18.19	29.60	64.13	39.29	52.21
2001	66.64	41.90	54.69	59.17	34.76	47.10	75.26	53.67	64.84

### Teacher related problems

- Indigenous children's inability to establish a communication link with the teacher results in low attendance and high dropout rates;<sup>2</sup>

- Teacher absenteeism;
- Non-indigenous teachers having an attitude of indifference to tribal languages, traditions, cultures, and lifestyles fail to perceive the human values ingrained in tribal folk cultures;
- No special training in tribal languages;
- Quite a thin Relationship between teachers, students, and tribal villagers;

### **NON-INSTITUTIONAL FACTORS**

- ❖ Physical isolation and remoteness and Geographical barriers
- ❖ Most tribal habitations in forest and hilly areas
- ❖ Poor accessibility and connectivity
- ❖ Travelling a long distance every day to attend school becomes a time factor

### **ECONOMIC UNCERTAINTY**

- ❖ Subsistence economy;
- ❖ High opportunity costs of tribal children;
- ❖ Unable to meet direct costs of schooling;
- ❖ Many benefits do not reach the beneficiaries;

### **SOCIO-CULTURAL DISCONTINUITY**

- Education is not given much priority, in a society dominated by the struggle for survival, options are limited.
- Social customs, cultural ethos, lack of awareness of the value of formal education conflict and gap between the home and school;
- Gender bias;

### **DIFFICULTIES AT LEVELS OF POLICY, PLANNING, IMPLEMENTATION, AND ADMINISTRATION**

1. Policies and programs formulated for indigenous welfare are not favorable in their environment. Consequently, no worthwhile policy for indigenous education has been formed.

2. Policies lack sensitivity to tribal problems and failed to understand indigenous social reality.

### **INDIAN SCENARIO OF EDUCATION OF SCHEDULED TRIBE**

Education has not yet been the priority of the tribal communities and is not an integral part of tribal culture. This has been a harsh reality despite 58 years of 'planned development' in the country. In their perception of life, education has failed to emerge as a part of their survival strategy. Since post-independence in India, the literacy level has been consistently down till date from the general population. Table 1 shows the educational disparity between the tribal population and the other communities.

Lack of educational atmosphere and infrastructure at home as well as dependence on the subsistence economy force their children out of school at

the primary and early secondary stages that time the boys are ready for odd jobs, and the girls for domestic chores for helping their working mothers. The Government Policy of protective discrimination and a string of

Development programs have succeeded in giving some relief to the relatively better-off section among the indigenous community but have failed to arrest the process of marginalization of the average tribal people who have been pushed to the fringe in all spheres of life- economic, social, educational, cultural, and political. It has been widely acknowledged that the socio-economic condition in rural India has constrained the process of primary education and the social inequalities of caste, class, and gender have been identified as the major causes of educational deprivation among children in India. The literacy rate for Scheduled Tribes is low at 47.10 % in India according to the Census of India, 2002, which is well below the national average. Especially the female literacy rate among tribes (34.76% as per Census

of India, 2001) is strikingly low. High levels of absenteeism and alarming dropout rates characterize tribal areas. Though the Right to Education Act 2010, has been accepted nationally and internationally, how much of these provisions are successful in enhancing educational facilities still remains a question. Nearly 45.02% of the tribal population falls in the age group of 0 to 14 years. Out of every six children in India, one child is a tribal child. According to the 61st National Sample Survey, current attendance rates for children in the age group 5- 14 years are 72.6% for Scheduled tribes in rural India. Similarly, the situation is also serious regarding school dropout of these socially underprivileged groups. Official data on the educational progress of scheduled tribes is more remarkable than in past years if only seen in quantitative data but the qualitative data show a different picture. Though there has been a considerable decline in the drop-out rate of STs, much still needs to be done to uplift of these groups in upper primary and secondary education. The proportion of children out of school in remote tribal areas is usually higher than among tribal children living in non-tribal areas. The main reasons for this are the limited educational infrastructure available in tribal areas because of their remoteness; indigenous hamlets being cut off from main villages or well-populated rural areas by geographic features; the difficulties faced by children living in smaller habitations in accessing existing formal schools; and so on. Other reasons for low school enrolment among Scheduled Tribe children include the reluctance of Scheduled Tribe families to educate their children - in addition to the high illiteracy among Scheduled Tribe parents; they may not value the education available, particularly in relation to its opportunity costs. Children are crucial family workers in the indigenous economy which includes agriculture as a main occupation, cattle grazing, labor on work sites, collecting firewood or other minor forest produce, stone quarrying, mining, and home-based work such as processing forest produce. Low levels of learning are found among indigenous children not only because of

household factors and problems with the language of instruction where this is not their mother tongue but to other school-related variables. The District Primary Education Program has shown that the achievement gap between tribal and non-tribal children can be narrowed by attention to classroom transactions and the school environment. The poor tribal child gets excluded in terms of getting support from home, family, peers, and siblings. The parents in general have no check on the learning of the child. None of the family members ensure whether the child is regular at school, attendance, homework, class work, and learning at home. The parents seldom meet the teachers or go to the school in order to interact with the school staff in order to understand the performance of their child. The parents remain excluded and generally avoid interacting with the teachers as the majority of them do not have the minimum literacy to understand what is being taught in the school. Here begins the cycle of exclusion among the indigenous children. This gradually snowballs to dropping out among the tribal children to settle down with little education from school as well as lower employment levels, and this process has been repeating from generation to generation resulting in low levels of participation among the tribal children in education over the past six decades leading to exclusion from the mainstream of development in the country. Almost all indigenous children are first-generation learners, the first ones in their entire generation to go to school and receive an education. They come to school without any orientation. Their home environment is both discouraging and non-facilitating to education. As there is no educational environment at home, their parents fail to provide any educational guidance to their children. This may lead to poor academic achievement and a less healthy attitude towards life and society. Participating in schools and successfully completing the whole cycle with no one at home to support and understand schooling processes is an uphill task for these little learners. They lack knowledge of time management, and school finances and are less likely to encounter a welcoming environment in school. Entering the school means for them that they are entering into an alien physical and social environment that they, their family, and their peers have never experienced. They are faced with leaving a certain world in which they fit for an uncertain world where they know they do not fit in. In Fact, indigenous children find themselves 'on the margin of two cultures' and have to offer to renegotiate relationships at school and at home to manage the tension between the two. As a result, they become the highest-risk students for dropping out.

### **RIGHT TO EDUCATION ACT, 2010**

The Right of children to Free and Compulsory Education Act came into force on April 1, 2010. This is a historic day for the people of India as from this day the right to education will be accorded the same legal status as the right to life as provided by Article 21A of the Indian Constitution. Every child in the age group of 6-14 years will be provided 8 years of elementary education in an age-appropriate classroom in the vicinity of his/her neighborhood. Any cost that

prevents a child from accessing school will be borne by the State which shall have the responsibility of enrolling the child as well as ensuring attendance and completion of 8 years of schooling. No child shall be denied admission for want of documents; no child shall be turned away if the admission cycle in the school is over and no child shall be asked to take an admission test. Children with disabilities will also be educated in mainstream schools.

All private schools shall be required to enroll children from weaker sections and disadvantaged communities in their incoming class to the extent of 25% of their enrolment, by simple random selection. No seats in this quota can be left vacant. These children will be treated on par with all the other children in the school and subsidized by the State at the rate of average per-learner costs in the government schools (unless the per-learner costs in the private school are lower).

RTE has been a part of the directive principles of the State Policy under Article 45 of the Constitution, which is part of Chapter 4 of the Constitution. And rights in Chapter 4 are not enforceable. For the first time in the history of India, we have made this right enforceable by putting it in Chapter 3 of the Constitution as Article 21. This entitles children to have the right to education enforced as a fundamental right.

## **UNIVERSAL DECLARATION OF HUMAN RIGHTS AND POLICIES**

The universal declaration of human rights has envisaged the following right

### **ARTICLE 26:**

- ✚ Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- ✚ Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance, and friendship among all Nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- ✚ Parents have a prior right to choose the kind of education that shall be given to their children.

After more than twenty years of armed conflict under the dictatorship of President Marcos, on the 26th of February, 1986, the People's Power Revolution finally forced the Marcos family to flee the Philippines. The Filipino people were left to rebuild their country, but they soon found that changing the corrupt and abusive structures that remained was an even more difficult challenge. Despite the new government's repeated assurances to protect human rights, serious violations were reported with disturbing regularity... perhaps the concept of human rights remained vague to many Filipinos, or

most were unaware of their ability to assert these rights. A new generation of human rights activists needed to be educated. Only when people understood their rights could they stand up for them.

Education for Freedom was organized to promote human rights at every level of society, beginning with the Filipino youth. Human rights should be a part of not just the law, but everybody's lifestyle. By working to promote awareness, Education for Freedom hopes not only to respond to human rights violations but to stop them from happening in the first place.

### **THE RIGHT TO EDUCATION: ARTICLES 13 AND 14 OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1966)**

#### **Article 13**

- The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and\ shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance, and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
- The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right: (a) Primary education shall be compulsory and available free to all; (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education; (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education; (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
- The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

- No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

#### **Article 14**

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

#### **ARTICLE 28 OF THE CONVENTION ON THE RIGHTS OF THE CHILD (1989)**

1. States Parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
  2. Make primary education compulsory and available free to all;
  3. Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
  4. Make higher education accessible to all on the basis of capacity by every appropriate means;
  5. Make educational and vocational information and guidance available and accessible to all children;
  6. Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
1. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
  2. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, a particular account shall be taken of the needs of developing countries.



## **DISCRIMINATION IN EDUCATION: DEFINITIONS FROM THE CONVENTION AGAINST DISCRIMINATION IN EDUCATION (1960)**

### **ARTICLE 2**

- ✚ The establishment or maintenance of separate educational systems or institutions for pupils of the two sexes, if these systems or institutions offer equivalent access to education, provide teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study;
- ✚ The establishment or maintenance for religious or linguistic reasons, of separate educational systems or institutions offering an education that is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for the education of the same level;
- ✚ The establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities if the institutions are conducted in accordance with that object, and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for the education of the same level.

### **ARTICLE 4**

The States Parties to this Convention undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular:

- To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;
- To ensure that the standards of education are equivalent in all public educational institutions of the same level, and that the conditions relating to the quality of the education provided are also equivalent;
- To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity;
- To provide training for the teaching profession without discrimination.

## CONCLUSION

India has emerged as a global leader and a strong nation at the turn of this century. Education is the key to the task of nation-building as well as providing the requisite knowledge and skills required for sustained growth of the economy and to ensure overall progress. The Scheduled Caste and Scheduled Tribe populations have been discriminated against and confined to the lowest rungs of social and economic hierarchies. The awareness of the Scheduled Tribe population is very low. The tribal families are mostly unaware of their right to education and thus fail to acquire the same. Moreover, most of the children are first-generation learners and consequently, they are not properly guided by their parents. To them going to school means getting enough food through the mid-day meal program. Another important fact is that to date the scheduled tribes have not been brought into the mainstream society to the extent to which the scheduled castes have already entered with the help of Dr. Ambedkar. The awareness among scheduled caste males is high and that of the female is also present more than among the tribal population. The problem of lack of awareness on the part of the teaching staff is also an influencing factor in aggravating the situation. During the last six decades, the trend of upward mobility is noticed among Scheduled Castes and Scheduled Tribes because of special treatment given to them through reservations, provisions for various incentive schemes, the opening of residential schools, and more access to government jobs, etc. but certain minorities feel that they are deprived of such advantages and are lagging behind in all aspects of life as compared to the majority group. Scheduled Tribe and Scheduled Caste in India have far more limited access to both educational and employment resources. The qualitative gap between the educational availability to this majority and the dominant elite minority has been widening alarmingly over the last two decades. Thus there is no true equality of opportunity for them. From the given social system educational disparity is there. How or whether the different provisions and various measures have helped that section of the population is still questionable. The educational achievement of the indigenous group is still poor. But the empowerment scenario for this vulnerable group has not been achieved to date. Scheduled tribes in India have far more limited access to both educational and employment resources. For this group, the hardships associated with living in a 'low-income' developing nation and the deprivations associated with minority status are compounded by a patriarchal value system. Socioeconomic development is associated with an overall improvement in the standard of living of scheduled groups. Scheduled groups considered to be more developed exhibit less gender inequality in terms of access to both education and employment. The Government of India, since independence, has been formulating various policies and programs for the development of disadvantaged groups. The endeavor is to ensure conditions in which the minorities are assured of their constitutional and legal rights, and educationally and economically they are at par with the national mainstream.

During the last six decades, the trend of upward mobility noticed among Scheduled Tribes is because of special treatment given to them through reservations, provisions for various incentive schemes, the opening of residential schools, and more access to government jobs, etc but certain minorities feel that they are deprived of such advantages and are lagging behind in all aspects of life as compared to the majority group. Indian governance at the Central as well as State level, has not, till now, addressed itself totally, comprehensively, and consistently to measures that would bring economic freedom, educational equality, and true equality of opportunities to STs in an integrated and comprehensive manner. Developmental assistance has been and is usually sporadic, patchy, truncated, and inadequate.

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# **VIOLATION OF THE BASIC HUMAN RIGHT TO LIFE – PRACTICE OF NARABALI**

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## Introduction

*Life isn't about finding yourself. Life is about creating yourself.*

- George Bernard Shaw

Human Rights are the basic rights that humans inherit and enjoy, for the element of being human. These human rights are neither created nor abrogated by any government. Human rights are being enjoyed by all, violated by few and missed by many others. The aspect of religion is something which is prevalent only when there is stability or absolute instability in an individual's life. Prayers to the Gods, offerings sacrifices, tributes, homages, etc. take place when an individual is following a particular religious faith or tradition. Religious practices are intended to bring about inner peace and bring about an overall transformation in the human self. Several practices of various religious faiths are harmless and spiritual. There are several other practices and traditions in religions like animal or human sacrifice which end up in blood shed. This research study intends to focus on the practice of human sacrifice which is locally known as Narabalai. The origin of the practice of Narabali, the prominence of the practice in the Hindu religion, in specific places in India, the violation of the basic human right to life through the practice, the faith of the people in the fulfilment of practice have been discussed.

## Human Sacrifice

*Sacrifice is perhaps the most universal and intense form of ritual.*

- Richard .D. Hecht

Religion is based on man's belief in a supreme being. Man carries out several rituals and procedures to please that supreme being. In order to study religion, it becomes mandatory to study the importance of religious sacrifice. Understanding sacrifice, much like interest in and attention to myth, has been a persistent issue throughout religious studies. Religious phenomena are usually accompanied around the world in hopes of formulating a systematic understanding of religion, where sacrifice has been particularly prominent and in many cases troubling. The Latin word *sacrificium*, derived from *sacer* meaning "Holy" and *facer* meaning "to make" is the etymological meaning for the word Sacrifice. The Sanskrit word *Yajna*, is derived from *Yaj*, meaning "to offer" or "to present". It is also defined as gift giving, to present something or transfer something<sup>28</sup>.

Human Sacrifice had been practiced as early as the Stone Age. It also occurs in the oldest surviving texts the Vedas. Human sacrifice was once widespread among ancient German, early Europeans, Ancient Near East, Arabs, Turks, Indonesia, West Africa, native Americans and Polynesia. Human sacrifice is

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<sup>28</sup> Jeffrey Carter, (Ed.), *Understanding Religious Sacrifice: A Reader*, (New York. 2003), pp.2-3.

more typical of marginal or minor tribes. Human sacrifice is found more frequently among barbarians and semi - civilized people. Surprisingly the cultures that practiced human sacrifice had strong governments. Human sacrifice is a nasty business. It is perhaps not surprising that people often tried to minimize its emotional and final costs. The victims were often very young or very old, a criminal, a slave or a prisoner of war. The victims of human sacrifice were often strangers to the marginal members of the community which practiced human sacrifice<sup>29</sup>.

### **Origin of Narabali**

Human sacrifice is a popular practice of killing one or more humans, as an offering to Divinity as a ritual. Human sacrifice had been in practice in various cultures all around the world. The victims of human sacrifice were typically killed in a ritualistic manner in order to please Gods. Similar practices have been found in various tribal societies termed as cannibalism and headhunting.

Human sacrifice in India is popularly known as "Narabali". "Nara" means man and "bali" means sacrifice. Human sacrifice has become a rare phenomenon in the present scenario. There have been 3 cases through 2003–2013 where 3 men have been murdered in the name of human sacrifice<sup>30</sup>. The earliest substantiation for human sacrifice in the India dates back to the Bronze Age Indus Valley Civilization. An Indus seal from Harappa illustrates an upside-down female figure with legs outspread and a plant dispensing from her womb. The converse side of the seal depicts a man holding a sickle and a woman settled on the ground in prayer. Historians and scholars interpret this as a human sacrifice in honor of the Mother-Goddess. Human and animal sacrifice became less common during the post-Vedic period, as ahimsa (non-violence) became part of the mainstream religious thought.

There are references to Narabali/ human sacrifice in certain Indian Sources. The first reference to that of a Saivite saint called Siruthondar and the account takes place in the Periyapuramam a significant Tamil Literary Work. He was one of the 63 Saivite saints of Tamil Nadu. He lived during the reign of Mahendra Pallava, 1400 years ago. A Bairagi (One whose principal deity is either Shiva or Vishnu or his incarnations, like Rama and Krishna. A mark (tilak) on the forehead and ear are their identification marks)<sup>31</sup> came and asked him to offer human meat of young five year old. Siruthondar, served as the commander in Chief of the Pallava army. He was a man of words and he was forced to cook his own son who fit the description and served the devotee. The Bairagi insisted that Sirithondar and his son had to join him for lunch. Sirothondar said that he was out playing and that he wouldn't come. At the end his son came alive and the Bairagi disappeared. Later it was understood and believed that it was Lord Siva who came as a meat eater to test his

<sup>29</sup> Jan N. Bremmer, (Ed.), *The Strange World of Human Sacrifice*, (Belgium, 2007), pp. 2-3

<sup>30</sup> Pandey, Mahesh "Priest 'makes human sacrifice'", BBC News, (2003-03-27).

<sup>31</sup> [https://joshuaproject.net/people\\_groups/16297/IN](https://joshuaproject.net/people_groups/16297/IN)



Siuruthondar's devotion. This is an instance of God himself asking the devotee in person to offer a human sacrifice.

Another instance is of Adi Sankara lived 2000 years ago and strived to eliminate the bad elements in Hinduism. He was considered an unruly element in the Hindu religion. A Kabalika, (Kāpālikas referred to the "skull-men". The Kāpālikas carried a skull-topped trident and an empty skull for begging)<sup>32</sup>, asked for his body to be sacrificed to the God. He agreed as ascetics never care for their body. He was ready to sacrifice when one of his disciples took the form of Narasimha and tore the Kabalika into pieces.

Purushamedha Yajna is mentioned in the Vedas. There had been an instance in the Vedas where a boy was tied to a pole and was later released by the revolutionary Vedic Poet Visvamitra to which none objected. There are other references where only human or animal images made out of rice flour were sacrificed in the fire<sup>33</sup>. The word 'Puruṣamedha' meaning sacrificing a human being occurs in Āpastamba Śrautasutras and Baudhāyana Śrautasutras. It is a type of Somayāga spread over five days. Whether a Puruṣa (human being) was actually sacrificed or whether the whole act had been symbolical, is difficult to ascertain. There are references to narabali in the Śatapatha Brāhmaṇa and the Taittiriya Samhitā also. According to other scholars, the ritual was only symbolical practice where after the Paryagni-karaṇa rite the āgnidhra priest goes round the human beings and the animals with a lighted torch after which the human beings are released and only goats are sacrificed .

Human sacrifices were performed along with the worship of Shakti until the early modern period, and in Bengal till the early 19th century<sup>34</sup>. This practice is not accepted by a major segment of Hindu culture. Still certain Tantric cults perform human sacrifice. Human sacrifice has been performed in the Hatimura Temple, a Shakti temple situated at Silghat, in the Nagaon district of Assam<sup>35</sup>. It was built during the supremacy of King Pramatta Singha in 1667. It was a prominent center of Shaktism in ancient Assam. The main deity is Goddess Durga in the form of Mahisamardini, slayer of the demon Mahisasura. It was an extremely ritualised act, and the procedures took many months to complete. Narabali is a deep-rooted faith in parts of Tamil Nadu. Villagers of Melur and surrounding regions assert the 'great benefits' of human sacrifice. They believed that it was the ultimate method to appease Gods. The ritual mostly included a yagam after which the victim's throat was cut with a knife and the overflowing blood offered to the deity, whose weapons and bodies were tarnished with the bloody offering<sup>36</sup>.

The Khonds, an indigenous tribe of India, residing in the tributary states of Odisha and Andhra Pradesh, became tarnished due to the British occupation of

<sup>32</sup> Gavin Flood, *The Blackwell Companion to Hinduism*, (John Wiley & Sons, 2008), pp. 212–213.

<sup>33</sup> <https://tamilandvedas.com/2016/10/12/human-sacrifice-nara-bali-in-india-post-no-3244/>

<sup>34</sup> Julius Lipner, *Hindus: their religious beliefs and practices*, (New York, 1994), p. 185.

<sup>35</sup> Baruah, B. K.; Sreenivasa Murthy, H. V. *The Hatimura Temple*. Hindu books universe, Dec 12, 2009.

<sup>36</sup> <https://timesofindia.indiatimes.com/home/sunday-times/deep-focus/A-bloody-scram-that-shook-Tamil-Nadu/articleshow/49119913.cms>

their district in 1835<sup>37</sup>. The prevalence and cruelty of the human sacrifices they practiced led to the practice being abolished. Many cultures show evidences of prehistoric human sacrifice in most of their mythologies and religious texts, but have faded away before the onset of historical recordings.

### **Human sacrifice carried out by the Khonds**

The tendency to assign human attributes to God was a marked peculiarity in almost all systems of religions. The mortification of flesh was gratifying to the divinity. When children were several in the family they were readily spared. Penance and mortification formed a part of religion. The difficulty of keeping in a large body of prisoners of war had often suggested the necessity of disposing them off by slaughter in the name of religion<sup>38</sup>.

In India, Human Sacrifice was widely practiced in Khondmals inhabited by Khonds and Ghonds of Ghumsur. The Khonds called the human victims as Toki or Kedi. In 1837, Captain Campbell obtained permission from the British Raj to abolish the practice and was successful in saving 29 victims. On March 16th 1841, Lord Elphinstone adopted a steady, progressive and systematic policy to eradicate the superstition behind the religious practice. Campbell was followed by his successors in saving victims. A game called Meriah Karsana was a prominent game played by the indigenous tribes Murias who lived in the Khonds region where a gang of boys would kidnap some boys one after the others and sacrifice them.

The Meriah sacrifice was a defensive strategy to save their existence in a subsistence economy against the devastation of the outsiders. Origin of the Meriah sacrifice can be traced from the legend of wild tribes. The legend said that there were two females, Karaboodi and Tharthaboodi, who had two sons. The son of Karaboodi was asked to by his mother to sacrifice her to propitiate the Mother Goddess Thadi Pennu. The blood was drunk (absorbed) by mother earth and resulted in productive yielding. The Mother Goddess Thadi Pennu ordained the Khonds to repeat this ritual annually in order to preserve their existence. The Khonds believed that Tumeric and other crops got their red colour from the blood of the Meriah<sup>39</sup>. Thus, the practice gained prominence in spite of being prevented. These sacrifices have significant purposes and differed from person to place and circumstance.

### **The Purpose of Narabali**

Human Sacrifice benefits communion between humans and Gods to renew the cosmos and thus secure common wellbeing<sup>40</sup>. The practice of Narabali had different purposes based on context and location. Mostly the human sacrifices had the intention of endearing the Gods' favor in warfare. In the communities

<sup>37</sup> James Hastings, (Ed.), *Encyclopedia of Religion and Ethics*, vol 9. (Kessenger Publishing, 2003), pp. 115 - 119.

<sup>38</sup> Rajendralala Mitra (Raja), *On Human Sacrifices in Ancient India*, (Bengal, 1876), p. 77

<sup>39</sup> Sir John Campbell, *Human Sacrifices in India*, (New Delhi, 1986), p. 5

<sup>40</sup> Vera Tiesler, Andrea Cucina, (Ed.), *New Perspectives on Human Sacrifice and Ritual Body Treatments in Ancient Maya Society*, p.19

of the Khonds, every household has to shed the blood of a human victim when its principal crop was sown or planted. It was also carried out as a prelude to the harvest as an obligatory ritual. There were additional human offerings throughout the season. If there was a bad health condition among the community or if the cattle were attacked by diseases or wild animals, then human sacrifices were performed. The headman offered a human sacrifice for his well – being. This was supported by the community as the head man's wellbeing was very important. Private human sacrifices also took place. Sacrifices during times of calamities called for a human sacrifice to appease the Gods<sup>41</sup>. Analysts have suggested that human sacrifice helps to maintain social stratification. The researchers observed that through several probabilistic models, exploring how the cultures had changed over time and what role human sacrifice played in those changes. Human sacrifice, in other words, is a useful tool for elites who want to maintain their power in a stratified society.

### **Violation of the basic Human right of Life in the name of religious sacrifice**

Nothing could be more abhorrent than the idea of slaughtering human victims in order to glorify Gods. Religions have specific purposes. The practices of a religion are to accomplish the objectives of salvation of an individual and others. The Gods render blessings to worship and obedience to God. Different religions have different understandings of salvation and God. Human Sacrifice is an ultimate practice of attaining blessings and pacifying God. Human sacrifices are usually not carried out with the consent of the victim. This results in the violation of the human rights of that victim in the name of religious sacrifice and religion. Human rights violation includes the violation of the rights to exist, personal liberty and physical abuse<sup>42</sup>. The worst forms of violations of the right to life are massacres, starvation of large populations, and genocide. Genocide refers to the intentional extermination of an ethnic, racial, or religious group. Killing such group members, instigating them physically or mentally, imposing procedures to prevent birth, or compulsorily transfer of children are part of genocide. Genocide is often regarded as the most offensive crime against humanity. Human sacrifice is worse than Genocide. Human sacrifice in the name of religions transforms things totally in to a traditional and religious practice thereby having its own religious implications if not fulfilled.

### **Protection of Human rights in India**

India is a country which respects the rights of every individual citizen and has a Constitutional framework based on rights. The government of India is a part of the UN Human rights commission and the Indian Constitution guarantees every citizen legal remedies. Violations of human rights are subject to criminal action by the police. The Government of India had taken several steps to curb

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<sup>41</sup> Jan N. Bremmer, (Ed.), *The Strange World of Human Sacrifice*, (Paris, 2006), p. 207

<sup>42</sup> <http://www.humanrights.com/what-are-human-rights/violations-of-human-rights/>

the aspects pertaining to human rights violations, especially the one like human sacrifices. The National Human Rights Commission and the State Human Rights Commission are designated with duties of safeguarding the human rights.

Anti-Superstition and Black Magic Act also known as the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013 is a criminal law act for the state of Maharashtra, India. It was initially drafted by anti-superstition activist Narendra Dabholkar in 2003. In July 2003, the draft was approved by the state government. The bill was sent for ratification to the Union government by Chief Minister Sushilkumar Shinde in August 2003. The act criminalises practices related to black magic, human sacrifices, use of magic remedies to cure ailments and other superstitious acts. Finally it was promulgated on 26th August 2013<sup>43</sup>. Karnataka Prevention of Superstitious Practices Bill, 2013 was passed following the footsteps of Maharashtra is the state of Karnataka. The draft law titled the Karnataka Prevention of Superstitious Practices Bill, 2013 has been drafted by the students of the National Law School, Bangalore. According to the draft bill, thirteen superstitious practices have been classified as evil practices. Expressing fear that the proposed anti-superstition Bill would endanger Hindu traditions and so the State government's proposed Bill has been put on hold<sup>44</sup>.

India is a secular country. It is the responsibility of every individual to respect the religious beliefs of the other. Violating or insulting the religious sentiments of an individual, community or a religious group is a crime. Human sacrifice is a religious practice that is usually performed to please Gods. Though the Government and the police are vigilant enough to prevent unlawful acts of human sacrifice, it becomes very difficult to prevent when the Narabali performances are carried out stealthily in burial grounds at mid night or in the middle of the forest in the early hours of dawn. Only when people report of missing persons or when evidences of body or head are found they form the base of a criminal activity.

The Preamble of the Indian Constitution indicates the word "secular", indicating that the State will not discriminate, patronize or meddle in the profession of any religion. It also safeguards individual religions or groups by adding religious rights as fundamental rights. Article 25 of the Indian Constitution says "all persons are equally entitled to freedom of conscience and the right to freely profess, practice, and propagate religion, subject to public order, morality and health"<sup>45</sup>. Further, Article 26 says that all denominations can accomplish their own affairs in matters of religion. All these rights are subject to be regulated by the State<sup>46</sup>. The government has

<sup>43</sup> Jebagnanam Cyril Kanmony, *Human rights violation*, (New Delhi, 2010), p. 24

<sup>44</sup> <https://blog.ipleaders.in/antisuperstition/>

<sup>45</sup> <http://www.constitution.org/cons/india/p03025.html>

<sup>46</sup> Gerald James Larson, *Religion and Personal Law in Secular India: A Call to Judgment*, (Indiana University Press, 2001), pp. 25

entrusted the Ministry of Minority Affairs, the National Human Rights Commission (NHRC) and the National Commission for Minorities (NCM) to reconnoiter religious discrimination and to make recommendations for redresses to the local authorities. Though they do not have any executive power, local and central authorities generally follow them and monitor the happenings throughout the country. These organisations have investigated numerous instances of religious tension at regular intervals.

### **Staunch faith in the practice of Narabali**

Faith is a strong belief in the doctrines of a religion, based on spiritual conviction rather than proof. Every individual has faith and trusts in some supreme power or the other. The individual believes that in order to pacify or please the Supreme Being it is essential to carry out rituals and practices. These rituals and practices stay spiritual unless it doesn't hurt others verbally or physically. When the religious sentiments are hurt or when individuals are hurt, abused and killed like in the case of Narabali, religion takes a different form. When faith is the base of religious livelihood, nothing can stop the individual or the community in ceasing from performing a particular religious practice<sup>47</sup>. The believers of the practice of Narabali, consider it right to carry out such a barbaric practice in order to attain their requirements from the Gods and to soothe the Gods. The practice is a result of the calamity or damage which had recently taken place and is the only refuge. Rather than calling it a superstition it can be considered a blind belief. Superstitions can be prevented by explaining the consequences or the reasons behind it. Whereas blind faith is something which cannot be rectified. The practice is still in vogue in many parts of the country in spite of vigilant policing.

### **Conclusion**

Religion has been developed by humans to have an attachment or a link with the Supreme Beings. The religious rituals and practices are means of communication with the Gods. The religious dialogues get intense when the rituals and practices transform to become hazardous to the lives of certain devotees or rather victims. The barbaric practice of Narabali, has been in practice ever since the stone age. Through the growth of civilization, development of science and technology, it is an astonishing fact that the practice of Narabali has been able to sustain itself. This clearly proves that no body or nothing can tamper the faith and belief of the people. This practice has been able to endure itself in spite of various factors due its implications that have been experienced by the people. Their experiences have been transferred from generation to generation. The practice had survived so far as it is part of a religion. In India anything in the name of religion is compromising.

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<sup>47</sup> Michael Hoelzl, ,Graham Ward *The New Visibility of Religion: Studies in Religion and Culture Hermeneutics*, (New York, 2008), p. 57

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# **TRADITIONAL WATER HARVESTING TECHNIQUES, ENVIRONMENT AND PUBLIC HEALTH: A HUMAN RIGHTS PERSPECTIVE**

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### **ABSTRACT**

Water plays a vital role in sustaining all forms of life; producing food to meet the basic needs for human sustenance and well being; and in maintaining a healthy eco-system. It is a renewable but limited natural resource. Local level issues – be it agriculture, health, sanitation are associated with water security which has been put to risk by climatic fluctuations and dry spells causing droughts and famines world wide and in India as well. In the current awareness towards climate change adaptation to manage the challenges climate change is precipitating on human systems and well-being, traditional water harvesting systems offer a great potential as viable and local feasible options. India has a history of traditional mechanisms and structures of water harvesting across the length and breadth of the country.

Ecologically safe engineering marvels of water conservation have existed in India for nearly 1500 years, including traditional systems of water harvesting, such as *Bawari*, *Jhalara*, *Nadi*, *Taanka*, *Khadin*, *Talab*, *Baoli*, *Ahar Pynes* (Bihar), *Johads* (Odisha), *Panam Keni* (Kerala), *Bhandara Phad* and *Ramtek* (Maharashtra), *Zing* (Ladakh), *Kuhls* (Himachal Pradesh), *Zabo* (Nagaland), *Jackwells* (Nicobar Islands), *Pat system* (Madhya Pradesh) and *Eris* (Tamil Nadu). Even today these systems remain viable and cost-effective, alternatives to rejuvenate depleted groundwater aquifers. These structures could be upgraded and productively combined with modern rainwater-saving techniques such as anicuts, percolation tanks, injection wells and subsurface barriers. Several thousand stepwells in varying degrees of grandeur had been built throughout India, where they came to be known as ‘retreat wells’ because the travelers and pilgrims could park their animals and take shelter in covered arcades around these wells.

What makes this subject compelling today is, its relevance to the present day water management and the growing awareness about ‘sustainable architecture’.

In Tamil Nadu, the glorious Chola dynasty has not only left behind a heritage of temples and sculptures, but also contributed to temple traditions and practices and built irrigation tanks that exist even after 1000 years. They commissioned the digging of many irrigation tanks – one of the major sources of drinking water for Chennai.

Throughout history, many water conservation and management strategies have been employed, but only a few have proved successful. Stepwells were one such effective water management technologies used in India. They form a unique, efficient system of hydraulic engineering that demonstrates the region’s traditional understanding of the sustainable use and management of its land, water, and agricultural biodiversity.

Ancient water harvesting techniques integrated stepwells into agricultural and irrigation networks using prefabricated structures, to allow open channel flow, networked with surface water bodies. They not only communicated and guided communities regarding water management and cleaner production, but also revealed historic knowledge regarding how ancient societies achieved social-ecological resilience. In addition to that, in almost all types of stepwells, aesthetics and ornamentation played an important role and served as a rich source of history to disseminate knowledge of governance, political ideas, social practices and lifestyle.

This article will explore the scientific, architectural, artistic, and functional dimensions of all major stepwells in India that have either disappeared or lost their relevance owing to expanding human population and environmental stress. Additionally, this will provide an opportunity to rethink modern water engineering systems and redesign water infrastructure with less negative environmental impacts to achieve the Sustainable Development Goals and ensure water for all.

### Harvesting History

Water plays a vital role in sustaining all forms of life; producing food to meet the basic needs for human sustenance and well being; and in maintaining a healthy eco-system. It is a renewable but limited natural resource. Local level issues – be it agriculture, health, sanitation are associated with water security which has been put to risk by climatic fluctuations and dry spells causing droughts and famines world wide and in India as well. In the current awareness towards climate change adaptation to manage the challenges climate change is precipitating on human systems and well-being, traditional water harvesting systems offer a great potential as viable and local feasible options. India has a history of traditional mechanisms and structures of water harvesting across the length and breadth of the country.

Ecologically safe engineering marvels of water conservation have existed in India for nearly 1500 years, including traditional systems of water harvesting, such as *Bawari*, *Jhalara*, *Nadi*, *Taanka*, *Khadin*, *Talab*, *Baoli*, *Ahar Pynes* (Bihar), *Johads* (Odisha), *Panam Keni* (Kerala), *Bhandara Phad* and *Ramtek* (Maharashtra), *Zing* (Ladakh), *Kuhls* (Himachal Pradesh), *Zabo* (Nagaland), *Jackwells* (Nicobar Islands), *Pat system* (Madhya Pradesh) and *Eris* (Tamil Nadu)<sup>48</sup>. Even today these systems remain viable and cost-effective, alternatives to rejuvenate depleted groundwater aquifers. These structures could be upgraded and productively combined with modern rainwater-saving techniques such as anicuts, percolation tanks, injection wells and subsurface barriers. Several thousand stepwells in varying degrees of grandeur had been built throughout India, where they came to be known as ‘retreat wells’ because the travelers and pilgrims could park their animals and take shelter in covered

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<sup>48</sup> These water conservation methods were found to be prevalent in Rajasthan. *The Hindu*, 9 April 2017, p.4

arcades around these wells. These water harvesting systems were based on traditional models, which were refined over centuries to adapt to the prevailing climatic conditions in the area of use<sup>49</sup>.

History states that traditional water management systems have met the basic and irrigational needs of the people. They have also evolved as specific responses to ecology and human culture. Not only have they stood the test of time, but also have satisfied the local needs. However, from the colonial period and especially post-independence period, these traditional systems have been abandoned and neglected in favour of large dams and irrigation projects.

### **Disappearing Traditional Water Harvesting systems and Deprivation of Human rights**

The main causes of disappearance if these traditional water conservations structures<sup>50</sup> are :

1. Urbanisation
2. Population
3. Public encroachments
4. Poor sewage structures
5. Blocking of the recharging pathways
6. Poor maintenance and negligence from civic authorities

The United Nations Water Development Report of 2018 recollects the traditional nature-based solution to address water crisis, averting human rights violations. One was the experiment by India's waterman Rajendra Singh, who restored water resources in Rajasthan, through the construction of small-scale water harvesting structures. This had brought back water to many drought-hit areas, revived dry rivers, increased farm productivity and forest cover. Encroachment of waterbodies have been identified as a 'major causes' of flash floods in Mumbai (2005), Uttarakhand (2013), Jammu and Kashmir (2014) and Chennai (2015). The revival of traditional water systems and proper management including Niti Aayog's warning are to be taken seriously, or else groundwater level will go dry affecting many people, depriving of their rights.

With the changing climatic conditions, the Indian government has finally started looking at means to revive these traditional water harvesting - moreover these methods are simple and eco-friendly, highly effective for the local community who rely on them and is also good for the environment.

### **Human Rights to Water**

On the 8<sup>th</sup> of October 2021, the UN Human Rights Council adopted Resolution 48/13, recognizing that having a safe, clean, healthy and

<sup>49</sup> Aggarwal, Anil and Narain, Sunita, (2001), *Dying Wisdom : Rise, Fall and the Potential of India's Traditional Water Harvesting Systems*, New Delhi : Centre for Science and Environment, pp.35-39

<sup>50</sup> S. Annamalai, Kudimaramathu : A much needed revival or watered down revamp ?' *The Hindu*, 9 April 2017, p.2

sustainable environment is indeed a human right<sup>51</sup>. We human beings have become the principal driver of environmental change. Our actions have impacted the global environment, which in turn has impacted spatial and temporal distribution of precipitation that falls on watersheds and the timing of its runoff. Changes in landscapes, due to the growth in food and energy production and from the movement of people from rural areas, all of us are altering the quality and quantity of freshwater resources. In the past, we have made decisions regarding the management of our water resources that have not helped us become more secure or sustainable. We have disrupted and overallocated river flow regimes, overdrawn groundwater aquifers, polluted some water bodies and degraded ecosystems.

The protection of human rights and the promotion of a healthy environment go hand-in-hand and are mutually reinforcing. Human rights standards and principles also have the potential of informing and strengthening policymaking in the area of climate change, promoting sustainable outcomes placing issues of availability, accessibility, quality, non-discrimination at the forefront of all mitigation and adaptation efforts<sup>52</sup>. Applying the principle of non-discrimination in measures to address climate change requires specific attention to the groups who are normally the most affected, yet neglected. Women and young girls face specific obstacles to the enjoyment of their rights to water and sanitation and bear the brunt of increasing water scarcity and poverty. They are the ones who often sacrifice their time to fetch water, and in some places women are responsible for the provision of food and water in their houses. The lack of access to sanitation is a major obstacle to human development by causing contamination of drinking water on a large scale, forcing children to drop out of schools, missing work, staying away from public places without proper sanitation to live a life of dignity<sup>53</sup>. Climate change can worsen this situation if the gendered impact of the lack of water and sanitation are not taken into consideration.

More than our human-made systems, our planet's natural resources are the foundation for these stakeholders to fulfil their roles, and for communities and households to self-supply wherever drinking water and sanitation services are inadequate. Without the hydrological cycle, healthy freshwater ecosystems and a proper understanding of water in the respective landscape, access to water supplies cannot be secured in the long run. This can in turn can threaten many living species on Earth, including human beings.

In conclusion, the traditional water management systems are a more agreeable option as they promote social cohesion by compelling the members of a community to come together to construct and maintain these systems. They also incite social harmony due to its equitable nature and is economically viable as a tourist or religiously relevant space. In terms of sustainability, they

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<sup>51</sup> <https://siwi.org/latest/human-rights-water-resources-and-governance-for-a-healthy-and-sustainable-e>

<sup>52</sup> Jayant Sriram, 'Lessons from ancient India', *The Hindu*, 8 May 2016, p.11

<sup>53</sup> Jayant Sriram, 'Lessons from ancient India', *The Hindu*, 8 May 2016, p.11

last longer, and are simple to build and use. Thus these existing systems should be maintained, some systems should be revitalized and the regions with no such systems should adapt them to tackle the water scarcity issues, reduce water stress and achieve long term sustainability.

### **The Last Drop : Conservation and Response Systems**

The water management scheme was launched with the aim of rejuvenating the state's crumbling water bodies and water foundations of architectural beauty. *Kudimaramathu* is an ancient Tamil concept of participatory water management. The term is derived from two words – *Kudi* (people) and *Maramathu* (repair)<sup>54</sup>. The entire village get together to perform repair and maintenance work to keep all the physical structures intact. A *neerkatti*, a dedicated person kept a close watch on the water level and was in charge of channeling this water to the individual fields<sup>55</sup>. After the Madras Water Board Act of 1930 and subsequently the Grow More Food campaign of 1946 during the British period, this ancient system fell by the wayside.

The concept of water harvesting is a critical topic and stepwells were very efficient but the visual magnificence and individuality of each structure is what stays in everyone's mind. Stepwells can be revived. Silt and trash clogging the wall-shaft of unused stepwells can bring it back to life.

Stepwells are often seen as archaic structures that are not factored into modern town planning. But an upscale housing colony called Umaid Heritage in Jodhpur, Rajasthan, is experimenting to change that by creating a modern interpretation of a stepwell<sup>56</sup>. This model can be emulated in other parts of the country. It is a 900-foot long structure with endless panels of interlocking beams and pillars and can hold up to 17.5 million liters of water. All that is needed is a natural slop to build a stepwell. But even in their state of ruin, these architectural wonders can hold lessons for modern day architects and town planners – to innovate and build in harmony with water rather than in defiance of nature<sup>57</sup>. Adaptive reuse as a solution can be : (1) Adaptive reuse helps in preserving architectural and cultural heritage, which also serves educational purpose of displaying techniques and lifestyles of bygone days (2) Adaptive reuse also helps in providing job opportunities to the local craftsmen and laborers. Since most of the building is already built, the work needed to fit new function requires less money, making them economical (3) These old building are also environmentally beneficial, as they are designed to include natural light and ventilation, thus conserving energy.

We have monuments and culture that are alive and vibrant but we need to get the younger generation to understand and respect what we have and

<sup>54</sup> S. Annamalai, *Kudimaramathu : A much needed revival or watered down revamp ?* *The Hindu*, 9 April 2017, p.2

<sup>55</sup> Suresh Krishnamoorthy, 'A Standing example of Conservation architecture', *The Hindu*, 20 January 2016, p.8

<sup>56</sup> Jayant Sriram, 'Lessons from ancient India', *The Hindu*, 8 May 2016, p.11

<sup>57</sup> Suzanne McNeill, 'Of Stone and Water', *Culturama*, February 2016, p. 29

preserve what our ancestors have given us. Modern day building projects don't seem to think twice about filling up lakes and water bodies to reclaim land at great cost to the environment.

These places have become tourism and cultural places of interest, whilst the growing urgency for water conservation has led to a new appreciation of these ancient systems of water storage.

From the Environmental history of India, it is evident that a wide range of water harvesting structures, suitable geographic conditions existed in the country, and are still prevalent even today. The National Water Policy of 2002 (the last revision took place in 2012) had envisaged the rejuvenation of traditional water encouraging practices like roof-top rainwater harvesting, to further increase the utilizable water resources. But modern harvesting and irrigation systems have ruined these in many parts of the country. It is evident that wherever these structures were maintained, people have overcome the fury of drought and water scarcity. Now that the importance of these structures have been recognized and efforts are made to revive them along with the introduction of new technologies, there is a need to carry out detailed research and documentation of these practices and linking them with the drought mitigation projects.

It is necessary to understand the reason of declining practices and concern on these noble systems and workout socio-economic strategies along with a policy environment at national, state and local levels. The Government of India is working on two strategic interventions – water framework law and river basin authority act and in the light of the new water policy – the linkages to land and ecosystem for the sustenance of people's livelihood and health in the time of natural calamities.



# **HUMAN RIGHTS IN RELATION TO ENVIRONMENT: PULICAT LAKE – A TOURISM PERSPECTIVE**

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## ABSTRACT

Pulicat on the borders of Tamil Nadu and Andhra Pradesh, consists of an assortment of flora and fauna and is a prospective tourism destination in South India. It is the second largest brackish-water lake or lagoon in India which was also a natural harbour that includes a Dutch fort, Dutch cemetery, temples, churches, mosques and the famous Pulicat lake bird sanctuary. Due to the tourism activities in this destination, exploitation of the environment is a major negative impact of tourism at Pulicat. However, it is a place of international importance which has witnessed the rule of the South Indian rulers as well as the European rulers, but still, even during the present times, it does not have a proper waste management system. Being a spot with historical riches with affluent biodiversity, Pulicat has all the ability to be positioned as one of the significant and prominent tourism places of South India but it must have a properly maintained environment both for the tourists and the local population. This research paper will focus on how human rights in relation to environment is exploited at Pulicat in the perspective of tourism and some suggestions to improve its condition in the future.

**KEYWORDS:** *Conservation, Environment, Human Rights, Pulicat, Sustainability*

## INTRODUCTION:

Our knowledge about the historical context of older wetlands is derived from maps and records that have outlasted the ages. Wetlands were seen by humankind for many years as areas that needed to be emptied and transformed for agriculture. Wetlands are currently among the most endangered ecosystems on the planet. To maintain bio - diversity, ecology, and hydrology in eco - systems as well as for leisure activities, bodies of water like lakes and wetlands are important. They support the life cycles of several organisms and serve as an ecosystem for a vast range of plants and animals. Due to unsustainable use and poor management, a lot of the world's waterbodies have degraded, harming ecosystems as well as the way of life and culture of the people who live nearby. Constantly increasing wetland runoff have been accommodated by channelization, which has resulted in habitat loss, rising percentages of aquatic life facing extinction or even being put in danger, and affecting many of the water's useful purposes, such as drinking, boating, and fishing. In fact, the depletion and shortage of freshwater have major negative effects on humans as well as many other forms of life.

In this research paper, human rights related to environment at Pulicat in the perspective of tourism is being discussed. *Pazhaverkadu* otherwise called as Pulicat is a historical town located in Tiruvallur district of Tamil Nadu. It has rich reminiscence of social, political and maritime history. Pulicat lake also known as *Pazhaverkadu eri* is the second largest brackish-water lake or lagoon in India and also one of the largest fishing centres in Tamil Nadu. Pulicat became an important centre for its early rulers and the colonial powers due to

its role as a seaport in one of the few natural harbours in the Coromandel coast of India that is located right at the mouth of the Pulicat lake.

### **PURPOSE:**

The purpose of this research paper is to study the environmental degradation of Pulicat due to tourism activities. The major findings of this paper are to study the tourism significance of Pulicat lake, to provide a better understanding about the environment of Pulicat, to trace out the threats caused to its environment due to the promotion Pulicat as a tourism destination, and some suggestions to improve the environmental condition of the region in view to protect the human right to a clean, healthy and sustainable environment of the people residing and also the tourists visiting Pulicat.

### **SOURCES FOR THE STUDY:**

The methodology adopted in this article is analytical and descriptive. Regarding the sources, the work relies primarily on secondary data. The sources such as scholarly research articles, printed books, e-books, journals and newspapers were referred to carry out this study.

### **NATURAL THREATS**

#### **1. Climate Change**

The specific effects of climate change create a lasting negative effect on biodiversity. Over the last three decades, such adverse effects have been often reported. These had also exposed in the forms of droughts, cyclonic storms, and floods. Also, the water in the whole Pulicat lake was extremely warm with temperature around 30°C and salinity level were alarmingly high i.e., about 70–80‰. For example, the cyclone in Sriharikota, which concentrated on the northern region, caused severe alterations to the Pulicat lake's ecosystem. Natural disasters caused by wildfire, storms, and cyclones are gravely harming the lake's vegetation. A German based Non-Governmental Organization (NGO), that works for environmental and natural resource protection, has labeled the Pulicat lake as “Threatened Lake of the Year 2010”. In addition to providing a buffer against the effects of climate change, phytodiversity that provides the basis for adaptation is very important. A robust ecosystem requires a rich phytodiversity since plant species are the primary carbon dioxide sources.

#### **2. Pulicat Estuary**

The lake-mouth, also called as an estuary, is so important to Pulicat lake's hydrology, bio-diversity, and fishery supplies. But it seems to become thinner and shallower from the months of January to September, primarily because of sand build up that shapes a sand-bar all across the estuary. Since less sea water enters the lake and as a result low and high ocean waves becomes weak and also the lake's depth tends to decrease. The ecosystem and

aquaculture in this lake are both significantly impacted by it as well. And also, if the sand-bar closes up the estuary completely, the water already in the lake gets bounded and trapped that will evaporate and reach hypersaline levels.

### **3. Siltation and Shrinkage**

The high pace of sedimentation is yet another serious ecological concern that Pulicat lake is now dealing with. Flood water from all the possible rivers rushes into the lake during the Northeast monsoon in the months of October to December, eroding the topsoil and depositing it there. Tons of sand are also dumped into the lake by the tributaries and the Buckingham Canal. The Dutch had a natural seaport on the Pulicat lake, which has been shrunk to a length of less than a metre. At a pace of around one metre per one hundred years, the Pulicat lake is rapidly silting up. Before the 1600s, the lake had an average depth of roughly 3.8 metres. Compared to historical records, the current extent of the Pulicat lake is just 281 km<sup>2</sup>, whereas the lake's overall water expansion was approximately 481 km<sup>2</sup> in the year 1700 A.D. It demonstrates that during a period of 300 years, the lake's area had shrunk by 200 km<sup>2</sup>.

During the monsoon, silt is deposited in some lake areas to a depth of one foot. Every rainy season as a consequence of those significant deposition, which further severely obstructs movement for boating, fishing and burying the benthic zone ecosystems, vegetation, and wildlife, a massive scale or mass mortality of the lake's ecosystem occurs. The environment of this lake is seriously affected. For example, the natural food chains, the reproductive capacity of the lake's inhabitants, and stock replenishment, which ultimately results in a significant decline of the lake's richness and fisheries. The depth level and water distribution of the Pulicat lake both are decreasing at the same time. The fish population in the lake that prefers deeper waters is dwindling fast. In just another hundred years, Pulicat lake may disappear completely as a result of siltation.

### **4. Tidal Dynamics**

Flocks of birds, river flows, and ocean tides, all carry sedimentation into the lagoon. Sediments include materials like shells, bird droppings, and peat, as well as arid-region materials like calcite, dolomite, and chemically formed salts. Coastal geomorphology and man-made structures such as breakwater averting coastal processes greatly affect the tidal inflow of Pulicat lake.

During the years 1999 to 2001, the tidal inlet at the estuary's southern side was around 40 metres. Since April 2001, this tidal inlet has been closed due to previous years' monsoon failure, the slow and gradual build-up of deposits on the estuary, the Pulicat lake system's decreased inflow of freshwater resources, and the weak tidal currents that are not strong and powerful enough to keep sand away from the estuary. Due to increasing runoff after the month of November, the mouth opens and it moves quickly towards north. Geographic Information Systems (GIS), Global positioning System (GPS), and remote sensing techniques are used to monitor long-term changes in the tidal

inflow dynamics. During the year 2000, there were three inlets in the estuary. A study in the year 2001 shows that the fishing community faced inconvenience due to the closing of inlet channel. In April 2002, the site had only one inlet, which was opened in November 2001. This evidently shows the dynamics of tidal inflow and its effects.

## **MAN-MADE THREATS**

*Lakes and lagoons are motionless stagnant type of water body which means, any pollution in that will not move off and flow away but it will continue to accumulate in the very same place. Therefore, pollution in such water bodies is much more prominent and deadly than river and streams, that flows and oceans which are much too larger in size.* Pulicat lake that has a bird Sanctuary straddles between two states, Tamil Nadu and Andhra Pradesh.

### **1. Aqua Farms**

Prawn and crab farms set up by the Private entrepreneurs, along the margins of the Pulicat lake, also adds to the draining of the lake water, right round the year. More than this, these aqua farms, unfortunately discharge untreated effluent waters from the culture ponds, back into the lake, degrading the quality of water and substratum in the lake, and changing the bottom of the biodiversity, swimming organisms, including fishes and prawns. Such polluted effluents may even add in toxic pollutants and pathogens into the food-chains, biodiversity and also into the sea foods like prawns, crabs and fish which are locally consumed and exported. During summer, the hypersaline waters in the northern regions of the Pulicat lake are harnessed to extract manufacture salt, which also contributes to the depletion of lake water as well as to salivation of soils.

### **2. Developmental Projects**

*The Pulicat lake region in Tamil Nadu faces a greater threats such as the developmental projects in and around Pulicat region will slowly harm the ecosystem of the Pulicat lake ecosystem that extends across 40 km from Ennore to Pulicat.*

#### **i) North Central Thermal Power Station (NCTPS)**

*44 lakh litres of fresh water from the Ennore creek is used by North Central Thermal Power Station (NCTPS) and it lets out hot coolant water in to the Buckingham canal and the toxic fly ash in the form of slurry is discharged into the lagoon. This has been resulted in increase of temperature about 5°C at the outlets. Despite precipitators and chemical filters, the fly ash is made of toxic elements such as Arsenic, Cadmium, Mercury, Lead, Manganese, Florene and Beryllium. In Athipattu village, 10 km away from North Central Thermal Power Station (NCTPS) the concentration of salt pans has forced the people to quit their occupation. Fly ash is especially dangerous as it can be breathed in and results in permanent respiratory disorder, dermatitis, asthma, bronchitis and*

cancer. The particles of silica in fly ash could also induce silicosis which is very harmful.

#### **ii) Construction of Ennore Port**

The Ennore port was constructed in back waters which caused the sea to enter 50m into the main land that separates the Pulicat lagoon system and the sea. This has stimulated terrible water erosion at Koraikuppam and at eight other fishing villages next to Ennore area.

#### **iii) Tamil Nadu Industrial Development Corporation (TIDCO)**

Pulicat form an island with sea to its east and lagoon to its west. The Tamil Nadu Industrial Development Corporation (TIDCO) is taking 2900 ha for the proposed amount of Rs. 600 million petro chemical industrial complexes which may demand 45 million litres of water per day and quantity that would severely exhaust coastal aquifers. Corrupt pattern of fishing with *padivalai* has badly spoiled the aquatic assets. Edible oysters which were found in the lagoon are gone astray now because of intense siltation. This also leads to swift reduction of water stretch of the Pulicat lake.

#### **iv) Satellite Launching Station at Sriharikota**

There was also mangrove pollen on Sriharikota Island reminding their presence few years earlier. The loss of these mangroves may be one among the various reasons that hastens siltation thereby decreasing its biodiversity and ultimately stripping fishermen of their livelihood. It also faces several industrial, anthropogenic, environmental and developmental issues frightening not only the livelihoods of fishermen and also the very survival of this fertile lake itself.

### **3. Lime shell mining:**

Shorebirds The important threats that the shorebirds are lime shell mining, shorebird trapping and pesticide pollution. This action is mostly limited to the southern part and to a little extent in the northern side of the Pulicat lake such as Panangadu, Sunnambukkulam, Annamalaicherry and Irrakkam and in the northern part Toguramudi, Minjur and Valakadu. The second main hazard for the shorebirds discovered in the lake is lime shell mining. The Pulicat lake has very rich sources that attract people from the southern side who frequents the lake for mining. A long iron bar is used to find the depth of the lime shell deposits. If the deposits are found at low distance downward, then the miners begin digging the soil like mounds all over the place along the mining areas.

In turn, this activity affects the shorebird habitats making them unfit for feeding. The crop fields on the Pulicat lake are at the start of paddy cultivation and the farmers use chemical herbicide to prevent the growth of unwanted grass and inorganic fertilizers to increase the growth of the crop. This will have possible effects on the birds wintering in Pulicat lake which naturally coincides with the cultivation. Due to flooding in the lake many birds that are seen using these crop field species are Galinagogalinago, Limosalimosa,

Tringaerythropus, Tringaglareola and Actitishypoleucos. They largely depend on these crop fields for feeding during winter season, however, no dead birds seen in the crop fields but possible chemical weed killer contamination is possible in the shorebirds.

#### 4. Other Man-made Threats

Pollution from pesticides, sewage, oil spills from mechanized boats and industrial wastes from various fish processing units that operates through Kalangi and Arani rivers draining into the Pulicat lake are the major environmental threats. In addition to negatively affecting the bird sanctuary and the income of the fishers and farm labourers who inhabit in Pulicat, marine chemicals, salt producing industries, and shrimp farming on the eastern half of the lagoon also poses a major negative impact. The Pulicat lake's aquaculture operations is severely impacted by it. All these are the biggest ecological threats to the Pulicat Lake region, which causes fluctuations in the normal range of water salinity and the water level of the Pulicat Lake. Also, the biotic part of the Pulicat region's ecosystem is significantly affected.

#### IDEAS AND SUGGESTIONS

1. **Water management** is more important for the survival of human beings. So, for the Pulicat lake is concerned, management of the estuary is critical for the health and prosperity of the eco-system. The factors or reasons for the collapse of the water management in the Pulicat lake are due to poor hygiene, scarcity of drinking water, pollutants from agriculture, aqua farms and industries.
2. **Biodiversity stability and maintenance** is the instantaneous requirement of the Pulicat lake in order to control the balance of nature and support the available natural resources for future generations. **Biodiversity assessment** of Pulicat region is essential to prepare suitable protection strategies. Priority should be given to in-situ conservation by protecting the natural habitats. The Non-Governmental Organizations (NGOs) should create awareness among the people of Pulicat about the factors responsible for the collapse of the tradition in Pulicat lake.
3. **Prevention of drastic siltation:** Many of the shorebirds migrate from moderate countries to tropical countries to take advantage of favourable conditions. The Pulicat lake seems to have incessant and drastic siltation that makes the shallow areas into sand-flats which can be considered as a grave hazard to the ecosystem. The State Government can appoint professional Environmentalist or Geologist to protect the lake from these risk factors.
4. **Eco-Sensitive Zone (ESZ)** in and around Pulicat Bird Sanctuary indicates that there should be no reduction of any kind extended to make any ecologically harmful action like thermal power plants,

hazardous industries, airports or seaports in the 10 km circumference of Pulicat region. Other alternatives for these man-made structures in non-ecologically sensitive areas should be discovered in near future for further development.

- 5. Awareness Campaigns:** There should be possibilities for extending support to the fishermen's campaign by conducting and funding an independent environmental impact assessment study.
- 6. Support of Non-Governmental Organisation (NGO)**'s like World Wide Fund (WWF) will need to modify their project objectives to include proper scientific investigation of the ecological impact of the port and funding for legal intervention to demand the right to information for the affected people. This organisation also aims to work for the conservation of threatened ecosystems and should realize that it is vital to understand the symbiotic relationship between the fishing communities and the lake ecosystem.
- 7. Authority of Coastal Aquaculture** must lay down strict guidelines to ensure that aquaculture farms release wastewater into the lagoon only after proper treatment to save the lagoon's natural ecology from further degradation. Reclamation and infrastructure expansion both public and private should be strictly prohibited.
- 8. Institution of Pulicat Lake Development Authority:** To assure that there is no human intervention in the Pulicat lake's ecosystem, the government should consider the creation of Pulicat Lake Development Authority to keep the lake in shape.
- 9. Pulicat Lake Bird Lovers Society (PLBLS):** The state and central governments have taken a lot of action to protect the Pulicat lake's biodiversity. The Pulicat Lake Bird Lovers Society (PLBLS) was founded in Sullurpetta, in the Nellore District, with an intense focus on raising public awareness and safeguarding the Pulicat lake's biodiversity.
- 10. Restoration of Native Vegetation:** To support soil binding and formation of sand-bars, mangrove patches must be grown across the north and north-west borders of the Pulicat brackish waters. To stop the alteration of native ecosystems, it is necessary to eradicate organisms that seem to be alien to mangrove settings. To attract migrating birds, a lot of plants like *Barringtonia acutangula*, which act as nesting trees and provide for the nutritional and reproductive needs of the birds, must be planted and grown.

To be noted, Chennai city's water resources are inseparably linked to the Pulicat's well-being. The brackish water body's welfare is essential in keeping seawater intrusion at bay and sustaining underground aquifer systems.

## CONCLUSION

All the above, several other issues on the Pulicat lake are rapidly increasing both the habitat as well as species destruction in the lake, so that biodiversity in the Pulicat lake has been decreasing rapidly, almost to a point of vanishing. Under these formidable ecological and human threats faced by the Pulicat lake ecosystem, unless the local fishermen are concerned about these crises faced by the lake, and unless they are mobilized by their Non-Governmental Organizations (NGOs), to restore and conserve the habitats and biodiversity, in the lake, assisted by research scientists and students, we may totally lose the rich and rare biodiversity of the Pulicat lake, for our future generations.

To address these problems, which are accelerating the destruction of this unique ecosystem, the respective State governments must establish a development authority. Such a body can help develop an integrated management initiative for the entire lake ecosystem, with the support of the governments of Andhra Pradesh and Tamil Nadu. Key aspects of the process should include a community-based planning and management scheme (e.g., active participation of stakeholders and resource users), an integrated approach (that involves the entire ecosystem and not only the protected area), a zoning programme for land-use planning, clear conservation objectives, identification and mitigation of key impacts and, finally, a solid technical base for the project's implementation and monitoring.

In spite of all the above-mentioned drawbacks; the importance of Pulicat has to be brought to the people through the possible ways. The following measures by the state government, individuals and some NGOs can be considered to conserve the environment in and around Pulicat and the Pulicat lake: prevent ourselves and others from scribbling on the walls of the historical monuments like Dutch cemetery, cleaning the exterior and interior of the building and general landscaping, being a part of the 'Adopt a Heritage' initiative, spreading awareness around about these monuments and their importance, nominate historical buildings for landmark destination, create a website and maintain a discussion board, host tours and special events, create a self-guided driving tour accompanied by a booklet that visitors and residents can continue to use, special exhibits that feature the architecture of the Pulicat region, lecture series that features local historians, architects, or professors to talk about the historical importance of the place, workshops, seminars and conferences on the topic of Pulicat can be conducted to educate specific audiences about the Pulicat region and the Pulicat lake, frequent research about the monuments to carry out repairs if necessary will help to maintain the monument's historical integrity, the knowledge about this region and its specialities should be made recognizable to the public with the help of media, through advertisements and programmes, inclusion of lessons in detail about Pulicat in academic books can help in this regard, the heritage edifices in Pulicat region have to be restored and preserved.



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## **ROLE OF NGOs IN THE PROMOTION & PROTECTION OF HUMAN RIGHTS**

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**Abstract:**

*The evolution of the human rights movement clearly illustrates humanity's ongoing struggle toward creating a better world."*

**– Robert Alan**

*Human rights are "rights and freedoms to which all humans are entitled. Proponents of the concept usually assert that everyone is endowed with certain entitlements merely by reason of being human. Right, give expression to how all humans participate fully in civil society. Defining the idealized norms against which a society may be measured. As an expression of civic values that operate within any society, rights derives from the marriage of religious, philosophical, and legal principle that address social justice in the context of the worldwide struggle to combat oppression and inequity. They do out of an underlying, deep-rooted respect for human life, dignity, and diversity. Right cannot be thought of in isolation from a human. They are part of an integrated vision of what it means to participate in diverse human experiences. These run from the most basic interaction with the environment to the ways in which people live day-to-day to catastrophic events like war, genocide, or pandemics. Right, affect the local and intimate human relationship and the global relations that govern the way human capital and energy are exchanged, manipulated, and exploited. Right typically entails freedoms that make humans seem individual-oriented. But they also address the duties and responsibilities that make these freedoms more than simplistic expressions of individual self-interest. Finding the appropriate balance between individual self-interest and broader civic, and communitarian interests is the crucial problem at the heart of most human rights. In this paper, the fundamental purpose of the work of human rights NGOs is to ensure that governments, and other entities that hold power, protect and promote human rights and fulfill their human rights obligations. In this respect, human rights organizations are rather distinctive. Genuine human rights organizations do not take sides with respect to particular political or other interest groups. At the same time, whenever they lobby or campaign for victims or otherwise advocate for changes in law, public policy, or official practice, they challenge the status quo. Much human rights work involves opposing, criticizing, or challenging the opinions to those criticizing or challenging the opinions to those in positions of authority.*

**Key Words:** Human rights, NGOs, Role, Promotion, Protection,

**Introduction:**

Human rights as the 'Rights relating to life, liberty, equality, and dignity of individuals guaranteed by the constitution or embodied in international covenants and enforceable by the courts in India' The term non-governmental or, more accurately non-profit is normally used to cover the range of organizations which go to make up civil society. Such organizations are

characterized, in general generally characterized by having something other than financial profit as the purpose of their existence huge multitude of reasons for existence, and a wide variety of enterprises and activities. NGOs range from small pressure groups on, for example, specific environmental concerns or specific human rights violations, through educational charities, women's refuges, cultural associations, religious organizations, legal foundations, humanitarian assistance, and programs. The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.

### **Meaning of Human Rights:**

Human rights encompass an array of political, economic and social areas and, while defining needs, also present a set of individual rights that apply worldwide. The following is a general definition referred by the United Nations (1978): Human rights are those rights, which are inherent in our nature and without which we cannot live as human beings. Human rights and fundamental freedoms allow us to fully develop and use our human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual and other need. In this definition, inherent right means to allocating resource and construct in policies by which Human Rights apply to all people equally and not simply to select individual and groups. By classifying certain rights and freedoms as human rights, all governments recognize the common goal of creating conditions to guarantee those rights and freedoms, despite the intricacies involved in actually ensuring that they are granted.

### **Human Right & NGO:**

Human rights as the 'Rights relating to life, liberty, equality, and dignity of individuals guaranteed by the constitution or embodied in international covenants and enforceable by the courts in India' The term non-governmental or, more accurately non-profit is normally used to cover the range of organizations which go to make up civil society. Such organizations are characterized, in general, by having generally characterized by having something other than financial profit as the purpose of their existence tide of reasons for existence and a wide variety of enterprises and activities. NGOs range from small pressure groups on, for example, specific environmental concerns or specific human rights violations, through educational charities, women's refuges, cultural associations, religious organizations, legal foundations, humanitarian assistance programs. Tand the Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after

consultation with the Member of NGO's have a vital role to play in the promotion and protection of human rights specially in the developing country, has the largest number of NGO's whose activates are spared in different fields for the welfare of human being including the promotion and protection of human right.

Many organizations around the world dedicate their efforts to protecting human rights and ending human rights abuses. Public support and condemnation of abuses is important to their success, as human rights organizations are most effective when their calls for reform are backed by strong public advocacy. Non-Governmental Organization is one of the examples of such groups. In every part of the globe, there are Non-Governmental Organizations' (NGOs) working every hour of the day to document the injustices heaped upon women, children and the underclass, standing beneath the bottom rung of the society. By their active campaigning, they remind Governments to keep their promise in order to give practical shape to goals set by various national and international conventions on human rights. India is estimated to have between 1 million and 2 million NGOs. The NGO are a necessary corollary to the democratic machinery of the government, they are means of democratic empowerment of those who are less powerful and less advantaged as the government machinery and its authorized institution are not always sufficient to guarantee the protection of human right.

### **Human Right & NGOs**

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spared in different fields for the welfare of human being including the promotion and protection of human right.

### **Role of NGOs**

“The 21st Century will be an era of NGOs.”

– Kofi Annan, Former UN Secretary General

The world conference on human rights was held in Vienna in Austria in 1993, with objective “to review and assess the progress made in the field of human right”. The resolution no 38 of the declaration stated –the world conference on human right recognizes the important role of Non-Government Organization in the promotion of all human right and in humanitarian.

NGO organization have functioned as the conscience of the national in the field of human right by taking prompt action to investigate the instance human right by undertaking and the spot studies and publishing the observations. NGOs play a pivotal, role in many fields, such as in prevention of HIV/AIDS, educating to teach and train vulnerable groups, child care, child exploitation, and child labour, bonded labour, sex tourism, and providing counselling in number of matters including domestic disputes, subject relating to rights of women and children and so on. Among the wide variety of roles that NGOs play, the following are important –

*The Social Welfare Role* – where relief and charity are key actions. NGOs in this role can be seen as initiating internal programs and projects.

*The Mediatory Role* – where communication as a skill is important for development and social action. NGOs in this role can be seen as participating or taking up external programs and projects.

*The Consultative Role* – where support documentation and dissemination of information and expertise is critical. NGOs in this role can be seen as working in collaborative programs. Local experts/professionals/resource persons play major secondary roles.

*Development and Operation of Infrastructure:* Community-based organizations and cooperatives can acquire, subdivide and develop land, construct housing, provide infrastructure and operate and maintain infrastructures such as wells or public toilets and solid waste collection services.

*Supporting Innovation, Demonstration and Pilot Projects:* NGO have the advantage of selecting particular places for innovative projects and specify in advance the length of time which they will be supporting the project – overcoming some of the shortcomings that governments face in this respect.

*Facilitating Communication:* The significance of this role to the government is that NGOs can communicate to the policy-making levels of government,



information about the lives, capabilities, attitudes and cultural characteristics of people at the local level. NGOs can facilitate communication upward from people to the government and downward from the government to the people.

*Technical Assistance and Training:* Training institutions and NGOs can develop a technical assistance and training capacity and use this to assist both CBOs and governments.

*Research, Monitoring and Evaluation:* Innovative activities need to be carefully documented and shared – effective participatory monitoring would permit the sharing of results with the people themselves as well as with the project staff.

### **Advocacy for and with the Poor:**

In some cases, NGOs become spokespersons or ombudsmen for the poor and attempt to influence government policies and programs on their behalf. This may be done through a variety of means ranging from demonstration and pilot projects to participation in public forums and the formulation of government policy and plans, to publicizing research results and case studies of the poor. Thus NGOs play roles from advocates for the poor to implementers of government programs; from agitators and critics to partners and advisors; from sponsors of pilot projects to mediators.

### **Role of NGO at International level in protecting human rights:**

At the international level, the status of human rights is watched by many NGOs. Amnesty International is one such organization. This Organization is dedicated to publicizing violation of human rights, especially freedom of speech and religion and right of political dissent. It also works for the release of political prisoners and, when necessary, for the relief of their families.

For its commendable services in the field of human rights, Amnesty International was awarded the Nobel Prize for peace in 1977.

**International NGOs Australia Asia Worker Links:** It is an Australian non-government organization active since 1979, established to forge international labour movement links in the Asia- Pacific region. AAWL supports union, human, indigenous and women's rights, promoting solidarity between unions and advocating for improvements in corporate citizenship in the region. Its office is in the Victorian Trades Hall Council building, Melbourne. AAWL has conducted solidarity exchanges and study tours in many countries including South Korea, China, India, Nepal, Sri Lanka, Malaysia, Thailand, Vietnam, Philippines, Papua New Guinea, and Japan.

**The Fred Hollows Foundation** It is a non-profit, community based, non-government development aid organization that focuses on treating and preventing blindness and other vision problems. It operates in Australia, The Pacific, South and South East Asia, and Africa.

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**Khanya College** It is an independent non-government organisation based in Johannesburg, South Africa. Established in 1986, the primary aim of Khanya College is to assist various constituencies within working class and poor communities to respond to the challenges posed by the forces of economic and political globalisation. The motto of the organization is “Education for Liberation”. The Khanya College offices are located at 123 Prichard Street, downtown Johannesburg.

**Legal Resources Centre** the Legal Resources Centre (LRC) is a human rights organization based in South Africa with offices in Johannesburg, Cape Town, Durban and Graham’s town. The LRC employs over 65 lawyer specializing in public-interest law.

**Amnesty international** It is an international Nongovernmental organization which was started in 1961. Peter Benenson an advocate wrote an article in the observer newspaper and started a campaign appeal for amnesty because two students who raised a toast for independence were arrested; this was the reason for writing the article. At present Irene Khan is the secretary general of the organization. Amnesty international have over 2 million subscribers and supporters who fight for protection of human rights.

**Cool Earth** is a UK based international nongovernmental organization that protects endangered rainforest to combat global warming, protect ecosystems and provide sustainable jobs for local people. Cool Earth also refers to a Japanese program generally called the “Cool Earth Partnership,” inaugurated in 2007. Cool Earth protects and secures rainforest under imminent threat of destruction, working with other NGOs.

**Human Rights Foundation:** The Human Rights Foundation (HRF) is a non-profit organization whose stated mission “is to ensure that freedom is both preserved and promoted” in the Americas.

The Human Rights Foundation was founded in 2005 by Thor Halverson. Its head office is in New York City, New York, USA. Its definition of human rights focuses on the essential ideals of freedom of self-determination and freedom from tyranny and the rights of property.

### **Role of NGO at National Level in Protecting Human Right:**

NGO’s having played the role of development factor has been crucial as service providers. In the development sector, many NGO’s have moved ahead or gap filling initiatives to capacity building activities.

Some example as follow:

**Sulabh Movement:** It is a major social movement in the country for the betterment and welfare of Dalits, in a generic sense, and in particular for the liberation and social mainstreaming of scavengers.

**Child Relief and You (CRY):** It is a voluntary organisation committed to the upliftment of millions of children who have been deprived of their childhood due to various reasons. **Campaign against Child Labour (CACL):** The campaign against child labour is a joint initiative of Youth for Voluntary Action (YUVA), Pune and Tere des Hommes (Germany) India Programme. The Campaign is currently supported by ILO and is actively working for progressive eradication of child labour through provision of education, organisation of awareness programmes, promotion of legislative changes and rescuing children in bondage or victims of abuse.

Organisations like Saheli and Chetna are actively involved in the protection of Women's Rights. They provide free legal aid to women to fight for their rights against gender bias and discrimination.

**Butterflies** are an NGO with a programme for street and working children. It was started in 1988 and its activities include non-formal education, saving schemes for children, vocational training, holding Bal Sabhas, and creating awareness for children's rights, Bal Mazdoor Union, networking with other NGOs and research and documentation. The researcher is going to look in to some important national level NGOs in India.

**Ramakrishna Mission Home of Service:** It is an Indian non-governmental organization established in Varanasi, established in 1900 and became a branch of Ramakrishna Mission in 1902. It manages an education program on essential health problems in schools, slums and villages of Uttar Pradesh (India) thanks to auto produced multimedia educational films.

**People's Union for Civil Liberties:** It is a prominent civil rights organization in India. It was formed in 1976 by veteran socialist and campaign leader Jaya Prakash Narayan, who launched it as the People's Union for Civil Liberties and Democratic Rights (PUCLDR), it Was originally intended to be an organization free from political ideologies, bringing those concerned about defending civil liberties and human rights from different backgrounds onto a common platform.

**People's Union for Democratic Rights:** It came into existence in 1976-77 as the Delhi unit of a larger national forum, and became PUDR on 1 February, 1981. In the last two and a half decades of its existence the organisation has taken up hundreds of instances of violations of democratic rights, covering most parts of the country and involving the rights of many sections of society.

PUDR conducts investigations, issues statements, distributes leaflets, organizes public meetings, demonstrations and dharnas, and fights legal cases to highlight the violation of people's rights, and to help towards their redressal. PUDR also takes up issues of general importance that affect the

rights of people through general campaigns, publications and legal interventions.

These include: gender equality; rights of forest dwellers and forest policy; working class rights; agrarian conflict; caste oppression; deaths, rapes and torture in police custody; and undemocratic legislation, in particular the various incarnations of the 'terrorist act' (TADA and POTA) etc.

Child Rights and You: Rights and You (formerly Child Relief and You, till 2005), commonly abbreviated as CRY is a non-profit organization in India that aims to restore children's rights in India. The organization was established in 1979.

The organization partners with grass-roots Non-governmental organizations to uplift thousands of Indian children denied basic children's rights. In 2007, its media campaign showing "smiling kids" and asking citizens to partner instead of simply donate, was seen as a departure from stereotypical NGO sector advertising in India.

Bandhua Mukti Morcha: Bandhua Mukti Morcha (BMM) or Bonded Labour Liberation Front (BLLF) is a non-governmental organisation in India working to end bonded labour. Based in New Delhi, it was founded in 1981 by Swami Agnivesh who continues as its chairman. Bonded labour was legally abolished in India in 1976 but it remains prevalent, with weak enforcement of the law by state governments. Estimates of the problem vary. Official figures include a 1993 estimate of only 251,000 bonded labourers while BMM says there are 65 million bonded child labourers, and a larger number of adults. A 2003 project by Human Rights Watch has reported a major problem with bonded child labour in the silk industry, BMM's efforts are credited with the passing of legislation to abolish child labour in India.

The list of NGOs is by no means exhaustive. There are many other organisations working for the cause of human rights. The work of five organisations is reported here by way of illustration only.

### **Role of NGOs in protecting Human Right through Judiciary and NHRC:**

NGOs have played an important role in the protection of human rights. They cannot succeed in their role unless there is help from the judiciary. The NGOs help the victim of human right violation by providing them assistance and advice. The NGOs have filed cases, writ petitions and public interest litigation on behalf of victims and public at large for protection of human rights. The NGOs have fought against the system of bonded labour, fake encounters by police, protection of women children's rights, custodial violence and custodial death, prevention of torture and other inhuman practices. The judiciary has passed appropriate orders and given compensation to the victims on a petition by the NGOs. The NHRC encourages NGOs in the human rights. The NGOs also take up cases of violation to the NHRC and state human rights commissions.

**Conclusion:**

NGOs need to expand their programmes, campaigns, skits from yearly or bi-yearly to monthly. Frequent programmes increase the awareness of human rights even more than yearly.

NGOs also need to get more aid both from foreign and within India which will be useful to carry out their cause. NGOs must have clear goals and priorities, they should define what they are trying to achieve as clearly as possible. They should think strategically and assess how short term goals fit in with long term ones. NGOs must have a clear written work plan for both individual and staff activities. Plan reminds people of what the goals are, it helps keep things on track and with major projects or campaigns it helps people see where they fit into big picture.

Peace, development and human rights are essentially inter-related, inter-dependent and indivisible.” – Theo van Boven. The NGO play an important role to become a concrete expression of international, national and regional and local level voice to assist and stand up for those who can't speak themselves. Every human being is entitled to certain basic human rights which are available to them without discrimination of any sort. Human rights are protected by the United Nations and its specialized agencies. In India human rights are protected by the judiciary, human rights commissions, apart from these organizations the Non-Governmental organizations also have an important role in protection of human rights. The Non-Governmental organizations work from grass roots level to the national and international level in the protection of human rights.

**Contribution of NGOs towards the development of Human Rights**

1. Government should take a lead to set up delegate gatherings and components at the State, District, and Block levels for Government and willful associations to meet and to have exchanged for working together in arranging programs so that there is more collaboration instead of rivalry.
2. They contribute a lot to the society.
3. They pressurize the government on certain issues, such as protection of prisoners' rights, torture etc.
4. They approach the judiciary on behalf of poor people who otherwise have no access to justice.
5. They ask for submission of certain reports.
6. They play a special role especially in the developing countries for the development of human rights.

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# **CRIMES AGAINST WOMEN: A BLOT ON GENDER EQUALITY AND WOMEN EMPOWERMENT**

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**Abstract**

Women, constituting half of the nation, are still in social bondage and they suffer a lot in human history. They suffered for lack of social liberty due to child marriages, polygamy, enforced widowhood and want of education. Distinct gender roles are one major reason for violence against women. Our society has long been dominated by these gender norms and relationships. Crimes like rape, dowry death, domestic violence, kidnapping, molestation, torture, sexual harassment are experienced by women in India. Crimes have physical and psychological impact on women which preventing the women from leading a standard life. Male dominated Indian society is one in all the most causes of crimes against women. Crimes against women harm families and communities across generations and reinforce other evils prevalent in society. As the offense is common in India, the government and the authorities try to secure women in every possible manner. The Protection of Women from Domestic Violence Act, 2005, and many amendments in Criminal Law have been implemented to various acts that act against the modesty and dignity of a woman. There must be more awareness about the root causes of the violence against women. Equal rights for men and women must be a topic of initial education for both sexes. Women should be encouraged more to speak up or raise their voices against violence.

**Key Words:** Violence, Harassment, Polygamy, Abuse, Victims

**Introduction**

Manu, the ancient Hindu law-giver, laid down that a woman must remain subject to her father in childhood, to her husband in youth, and to her sons when she become a widow. In other words, she could never be independent. Women, constituting half of the nation, are still in social bondage and they suffer a lot in human history. They suffered for lack of social liberty due to child marriages, polygamy, enforced widowhood and want of education. As mothers, women represent the unfathomable depths of human sentiments, and, as sisters, they have risen to the unscalable heights of the finest human values of selfless affection and sacrifice. It is really impossible to describe individually the various roles women play to make the world better. The whole family revolves around the efforts of the women, as also the whole society and the nation.

In the social and cultural fields, they have gradually lost their position. In the economic sphere of activity though they are playing major roles out their contribution is not recognised and as a class they are occupying a secondary position. Unfortunately, the helplessness that pervade in different walks of life, has led to their exploitation at almost every step in life. The treatment of women in the society is cruelty and exploitation. There atrocities are of many types which range from mental to psychological assaults which so often result in killing or suicide. We cannot see a newspaper every day without such incidents of rape, kidnapping, suicide or dowry death, ill-treatment of

women takes several forms. The first category consist of individual acts which stop short of death of the victims like eve teasing, wife-beating etc, In all these incidents, women generally are not responsible.

In our society, violence is being committed in different ways, for different causes by different people against race, community, caste, family and individual. The women-folk, which is an indifferent segment as well as a reproductory organ of the society, has been relentlessly facing this violence for a long time. No doubt, nature and type of various violence against women is viewed differently in different societies and at different places. However, the root causes of violence in generals remain almost the same. Broadly speaking violence against women may be conceived into two major forms i.e. physical and mental. It is manifested mainly in the form of an outrage of modesty, burning and beating of women or any sort of physical torture. Even the early marriage, the frequent conceiving and the female infanticide belong to this category. The burdensome liabilities, imposition of social taboos and socio religious disabilities, prohibition on widow remarriages, non-fulfilling of one's basic needs by one's guardians their failure in providing protection and guardianship respectively in childhood, youth and old age, even the failure in arranging a suitable match at her marriageable age, in congruous marriages, bride price and dowry system causing both the physical and mental torture are the manifestations of violence against women.

Domestic Violence can be described as where one adult in a relationship misuses power in order to control another. It is the establishment of fear in a relationship through violence that includes other forms of abuse. The violence may involve physical abuse, sexual assault and threats. At times it can be more subtle, such as making someone feel worthless, not letting them have any money, or not allowing them to leave the home. The observations prove that violence, whatever be its kind, seems overtly to be committed due to some personal causes and for personal interests but covertly the roots of all kind of violence lie in the structural and the organisation patterns of society. It is also observed that most of the physical violent incidents are occurred partly in the middle and mostly in the lower middle and lower class communities where as the mental violence is observed partly in middle and mostly in upper middle and upper class societies.

In India, women are guaranteed equally freedom, opportunity and protection by the constitution and several legislations. Crimes against women are broadly classified under two categories:

1. The crimes identified under the Indian Penal Code
  - (i) Rape (Sec. 376 IPC)
  - (ii) Kidnapping and Abduction for different purposes (Sec. 363, 373 IPC)
  - (iii) Homicide for dowry, dowry deaths or their attempts (Sec. 302/304-B IPC)

- (iv) Torture, both mental and physical (Sec. 498-A IPC)
- (v) Molestation (Sec. 354 IPC)
- (vi) Sexual harassment (Sec. 509 IPC)
- (vii) Importation of girls (up to 21 years of age) (Sec. 366-B IPC)

## 2. The crimes identified under Special Laws

Reprehensible social practices such as commission of sati, demand for dowry, trafficking of women for immoral purposes etc, are identified as offences punishable under the following special social enactments to safeguard women and their interests. They are

- (i) Commission of Sati (Prevention) Act, 1987
- (ii) Dowry Prohibition Act, 1961
- (iii) Immoral Traffic (Prevention) Act, 1956
- (iv) Indecent Representation of Women (Prohibition) Act, 1986

### **Sexual Harassment at Workplace**

Sexual harassment is a common problem affecting all women in this world irrespective of the profession that they are in, but legal system is sleeping and so they fail in providing them security. It's not all, women living in those countries having developed legal system faces other problems like being fired out of work, ridiculed, societal pressure or promises of desired promotion, etc. that makes them left with no words. Sexual harassment is about male dominance over women and it is used to remind women that they are weaker than man. In a society where violence against women is posed just to show the patriarchal value operating in society, these values of men pose the greatest challenge in curbing sexual harassment. According to the law in India, sexual harassment violates the women's fundamental right of gender equality and life with dignity under article 14 and article 21 respectively. Although there are no specific laws for curbing sexual harassment at the workplace in India but certain provisions are there in other legislation like Indian Penal Code, which provides protection against women's sexual harassments such as in IPC. Change in attitude of people is a basic requirement for implementing any law in the society for women. This implementation of laws leads to protection against undesired sexual behavior. The prevention of sexual harassment should be done at all level of employees and it should be checked that the women employees get a positive environment.

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was passed with the objective of providing protection to the women at workplace. Sexual harassment is when one person subjects another person to an unwelcome act of physical intimacy like grabbing, brushing, touching, pinching, eve teasing, makes an unwelcome demand or request directly or by implication for sexual favors from another person, shows a person any sexually explicit visual material, in the form of pictures/cartoons/pin-ups/calendars/ screensaver version computers/any

offensive written material / pornographic e-mails or any other form of unwelcome conduct of a sexual nature, eve teasing, jokes likely to cause awkwardness or embarrassment, innuendos, sexist remarks. This statute superseded the Vishakha Guidelines for prevention of sexual harassment introduced by the Supreme Court of India. Every employer is required to constitute an Internal Complaints Committee at each office or branch with 10 or more employees. The act covers students in schools and colleges as well as patients in hospitals, employers and local authorities will have to set up grievance committees to investigate all complaints. Any aggrieved woman may file a complaint in writing to the internal committee/ Local Committee within 3 months from the date of incident or the date of the last incident in case of a series of incidents. The victim can also file a complaint with Police under Indian Penal Code 1860 under Sections 294, 354, 354A, 509.

Sexual harassment at workplace is highly prevalent in India and there is a need to provide a positive environment to the women workers. Government should make separate laws dealing with this issue. It should also realize that women worker also constitute a part of working population in India and it's the duty of the government to provide them security at work. New strategies should be made by the employers and managers to protect the organisation from this evil. Government and employers should ensure that women should be treated equally and gender discrimination should not take place at the workplace. Effective implementation of the policies can reduce the manifestation and mutilation of the sexual harassment to the minimum. One organisation can alter its approach to handle sexual harassment by viewing other organisations tactic. This will reduce or eliminate glitches caused by this harmful transgression. Government should understand that separate laws may not bring about equality in gender relations but a law dealing with sexual harassment would provide women immense support in their struggle.

### **Acid Attack**

Acid throwing, also called an acid attack is a form of violent assault defined as the act of throwing acid or a similarly corrosive substance onto the body of another with the intention to disfigure, maim, torture, or kill. Perpetrators of these attacks throw acid at their victims, usually at their faces, burning them, and damaging skin tissue, often exposing and sometimes dissolving the bones. The long term consequences of these attacks may include blindness, as well as permanent scarring of the face and body, along with far-reaching social, psychological, and economic difficulties. Section 326A and Section 326B of the Indian Penal Code, 1860 provide the punishment for voluntarily causing grievous hurt by use of acid and voluntary throwing or attempting to throw acid respectively. Section 100 of the Indian Penal Code allows the right of private defense to the extent of causing death if there is acid is thrown or there is an attempt of throwing acid.

## **Rape**

Rape is one of the most heinous atrocities committed on a woman in our society. It is known to be the fourth most common crime against women in India. Rape takes place if a man has sexual intercourse i.e, penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—

1. Against her will.
2. Without her consent.
3. With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.
4. By getting her consent by pretending to be her husband.
5. When she does not understand the nature and consequences of what she has consented to because of unsoundness of mind or under the influence of alcohol.
6. With or without her consent, when she is under eighteen years of age.
7. When she is unable to communicate consent.

A rape victim can file an FIR in the local police station under following Sections of Indian Penal Code.

8. 376-Punishment for Rape
9. 376A-Punishment for causing death or resulting in persistent vegetative stage of victim.
10. 376B- Sexual Intercourse by Husband upon his wife during separation
11. 376C- Sexual Intercourse by Person in Authority
12. 376D-Gang Rape

## **Domestic Violence**

Domestic violence in India includes any form of violence suffered by a person from a biological relative but typically is the violence suffered by a woman by male members of her family or relatives. Historically, domestic violence was understood as a concerning threat to women's lives in India driven by the Dowry system. Therefore, the earliest legislations in the

country to stop violence leading to so-called “dowry deaths” were implemented through an amendment to the Dowry Prohibition Act (1961). Section 304B of the Indian Penal Code criminalized any form of violence with respect to dowry demands by a husband or in-laws. India has adopted the Convention on the Elimination of All Forms of Discrimination against Women and the Universal Declaration of Human Rights, both of which ensure that women are given equal rights as men and are not subjected to any kind of discrimination. The Constitution of India also guarantees substantive justice to women. Article 15 of the Constitution provides for prohibition of discrimination against the citizens on grounds of religion, race, caste, sex or place of birth or their subjection to any disability, liability or restriction on such grounds. Article 15 (3) gives power to the legislature to make special provision for women and children. In exercise of this power, the Protection of Women from Domestic Violence Act was passed in 2005. The term “domestic violence” includes elaborately all forms of actual abuse or threat of abuse of physical, sexual, verbal, emotional and economic nature that can harm, cause injury to, endanger the health, safety, life, limb or well-being, either mental or physical aspects of the aggrieved person. The definition is wide enough to cover child sexual abuse, harassment caused to a woman or her relatives by unlawful dowry demands, and marital rape.

Domestic Violence can be described as where one adult in a relationship misuses power in order to control another. It is the establishment of fear in a relationship through violence that includes other forms of abuse. The violence may involve physical abuse, sexual assault and threats. At times it can be more subtle, such as making someone feel worthless, not letting them have any money, or not allowing them to leave the home. Complaint can also be filed under Section 498A for cruelty by husband or his relatives along with demand for dowry.

To curtail the growing incidents of dowry torture and dowry death, a new Section was incorporated into Indian Penal Code, that is, Section 498 A. According to this Section, whoever being husband or relative of husband of a woman, subjects her to cruelty shall be punished with imprisonment for a term which may extend to three years and fine. Cruelty herein means any willful conduct that is likely to drive a woman to commit suicide or to cause grave injury or danger to her life, limb or health (whether physical or mental) of the woman or harassment to force her to meet any unlawful demand for any property or security or on failure to meet the demand. Later, Section 198 A was added to the Criminal Procedure Code in 1983. In 2005, the Protection of Women from Domestic Violence Act was passed, which added to protect women from dowry harassment. Section 304 B was added to the Indian Penal Code, 1860, which made dowry death a specific offence punishable with a minimum sentence of imprisonment for 7 years and a maximum imprisonment for life. Further, under Section 4 of the Dowry Prohibition Act, 1961 a demand for Dowry is an offence wherein demand is made at the time of or even after

marriage even where no cruelty is involved. Wife beating is physical abuse of a woman by her present or former husband or male companion. It consists of repeated blows inflicted with intent to do harm. Threats and verbal abuse that were preceded by beating are part of a pattern of control of a wife by her husband that is basic to wife beating.

### **Kidnapping and Abduction**

Kidnapping means taking away a person against his/her will by force, threat or deceit. Usually, the purpose of kidnapping is to get a ransom, or for some political or other purposes etc. Kidnapping is classified into two categories in Section 359 of the Indian Penal Code and defined in Section 360 and 361 of the Indian Penal Code.

As per Section 359 of the Indian Penal Code, Kidnapping is of two types:

1. Kidnapping from India,
2. Kidnapping from lawful guardianship.

Section 360 explains kidnapping from India. According to section 360, if any person takes a person beyond the limits of India against the consent of that person or against the consent of someone who is legally entitled to give consent on that person's behalf, then the offence of kidnapping from India is committed.

Section 361 explains kidnapping from lawful guardianship. According to this section, if a person takes away or entices a minor (i.e, a boy under the age of 16 years and a girl under the age of 18 years) or a person of unsound mind, away from his/her lawful guardian without the guardian's consent, then that person commits the offence of kidnapping from lawful guardianship.

### **Conclusion**

Violence against women and girls is a human rights violation, and the immediate and long-term physical, sexual, and mental consequences for women and girls can be devastating, including death. Violence negatively affects women's general well-being and prevents women from fully participating in society. These include the right to live free from violence and discrimination; to enjoy the highest attainable standard of physical and mental health; to be educated; to own property; to vote; and to earn an equal wage. But across the globe many women and girls still face discrimination on the basis of sex and gender.

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# **Hundred years of Juvenile Justice System in India**

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Delinquency as a non-conformist behavior on the part of a child not only manifests a problem of personal disorganization but also symptomatizes a state of social break down. The problem in its entirety seldom comes to the surface, most of it being outside the reach of law enforcement agencies. The nature of the problem varies from culture to culture and within the same culture from time to time. It therefore needs to be understood as a separate entity quite different from the adult criminal justice system.

Even though juvenile delinquency rates are currently lower in India than in many other countries, they are bound to increase in the future. At present, however, cruel treatment, punishment and victimization of children are a more serious problem. Since Independence, several acts have been introduced to improve the Juvenile Justice System.

To understand the system of juvenile protection and welfare, one needs to clearly understand the Juvenile Justice System as distinct from the Criminal Justice System. The differential treatment given to the child, which has been in the process of evolution over hundreds of years, creates a separate Juvenile Justice System, other than the Criminal Justice System which is, obviously, meant for the adults, that is, those over 18 years of age. This system of separate legal and administrative treatment operates beyond the realm of Law alone and drifts into the complex dynamics of socio-economic, psycho-emotional and the family- community based institutional and non-institutional interventions and organizations.

To understand the distinction between the Juvenile Justice System and the criminal justice system it is important to go back to the history of Juvenile Justice System in India. This paper will talk about 100 years of trajectory of JJS and its implementation in Pre and Post Independence India

### **Pre-Independence**

With the emergence of the East India Company as a governing body from trading company led to the introduction of the first legislation relating to children in India. The colonial exploitation had whipped out the indigenous rural economy, forcing many a class of people to slums in the suburbs. It also increased destitution and delinquency among Indian children. Concern for the welfare of children took many shapes. The first ragged school for orphans and vagrant children in India was established in 1843 through the efforts Englishman, Dr. Buist. This school is now known as David Season Industrial School. The objects of the school was the reformation of juvenile offenders and encouragement of apprenticeship.

Under British rule in India the Common Law practice of '*parens patriae*' (*Parens patriae* is Latin for "father of the people".) In law, it refers to the public policy power of the state to intervene against an abusive or negligent natural

parent, legal guardian or informal caretaker, and to act as the parent of any child or individual who is in need of protection) marked the practice of differentiating juveniles from adult cases<sup>58</sup>. However British law had meager effect as most communities had few crimes, and most interpersonal problems were settled in panchayats, informal village courts. Children's law violations and disciplinary problems were handled by parents, caste and panchayat elders. These practices continue to some extent even today.

The Indian legal system, which was founded on Common Law practices was introduced during the British occupation of India. The impact of Common Law on juveniles in India began with the Apprentices Act of 1850, which provided power to magistrates to commit destitute, vagrant, and delinquent children to parents, guardian, or specified institutions as apprentices to learn trades for employment instead of sending them to prison for minor offences. This act related to juveniles between the ages 10 and 18, who could be held in these types of programs until they become 21 years of ages.

The Indian Penal Code 1860 which worked on the theory of deterrence and retribution, deemed children below 7 years of age as incapable of committing a crime (*doli incapax*), while the presumption of *mens rea* could be rebutted in case of children in the 7-12 age group since the child in this age is immature and cannot understand the act they have done, the consequences of their actions or what they have done is wrong.

The Whipping Act 1864, provided for the jails having separate provisions for juveniles. the Prison codes of Madras, Bombay, North Western Provinces and Bengal were modified in order to ensure the segregation of juveniles from adult offenders within the prisons.

In 1874, Sir Richard Temple (Lt. Governor of Bengal at that time) realized that the juvenile offenders present in the jails were growing in vice and ignorance<sup>59</sup>. He therefore felt that they should be subjected to reformation and industrial training. The Reformatory Schools Act of 1876 was thus set up which permitted young offenders (till the age of 15) to be sentenced to reformatory schools instead of being detained in prisons. It also reduced the severity of punishment to juveniles who had committed serious offences<sup>60</sup>. It empowered local governments to establish reformatory schools, and the sentencing court could detain boys in such institutions for a period of two to seven years.

A year later, the Code of Criminal Procedures of 1898 elaborated the methods of accomplishing these aims. It outlined specialized treatment for juvenile offenders, including the sending juvenile offenders to reformatories instead of prisons and probation for good conduct to offenders up to the age of 21. The

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<sup>58</sup>Vicentnathan SG(2006), Juvenile Justice in India, In *Delinquency and Juvenile Justice System in the Non-Western World*, (eds) Friday PC & Ren X, New York, Criminal Justice Press, pg- 25

<sup>59</sup>RathoreVaishali (2019), An Insight Into Indian Juvenile Justice System, Notion Press Media Pvt. Ltd.

<sup>60</sup>Siddique A (1978), Criminology Problems and Perspectives, Lucknow, Eastern Book Company, pp- 129-

establishment of reformatory schools advocated reformation and decriminalization of the juvenile justice system as well.

The Madras children's Act of 1920, which was the first comprehensive Act to be introduced in India, provided for juveniles courts, juvenile institutions and juvenile treatments. These courts were established with broad powers. They could be either separate, or part of adult courts with 'parens patriae' focus<sup>61</sup>. Juvenile hearings were conducted separately, privately, informally and practically without the right to appellate review. Felony cases for which juveniles might be given death sentence were not handled in the juvenile or magistrate courts, but were sent to higher level courts with jurisdictions over adults. The Madras Borstal School Act of 1925 created industrial schools for occupational training, moral development, and rehabilitation of delinquents<sup>62</sup>. Enactments and changes were eventually introduced to modify the system.

The Vagrancy Act, 1943, provided for care and training of children below 14 years who lived on begging, were under unfit guardianship, or under the care of parents with drinking or criminal habits, frequently visited prostitutes, were destitute, or subjected to bad treatment. Mass migration of people between India and Pakistan on the eve of independence aggravated the problem of Juvenile Delinquency and destitution<sup>63</sup>.

### **Post-Independence**

The Constitutions of India, created in 1949 after independence, recognizes the rights of the accused- the right against self-discrimination, the right to an attorney, and the right to freedom (article 20, 21, and 22 of the Indian Constitution). This along with many other constitutional safeguards the approach towards a just and separate juvenile justice system was now also centered on several international treaties such as the UNCRC, UN Standard Minimum Rules for Administration of Juvenile Justice (Beijing Rules).

Eventually the Children's Act of 1960 was enacted in India incorporating most of the provisions provided in earlier acts and practices. The central government enacted the Children Act for the protection and care of children in areas designated as Union Territories, which were under the direct control of the central government<sup>64</sup>. This act included provisions for homes certified schools and release on probation. It recognized the importance of legal rights and later led to agreeing that a defense attorney can be present in juvenile hearings. Children were now to be dealt by juvenile courts. It was the act that prohibited the imprisonment of juvenile offenders in union territories and lay down separate mechanisms to deal with juveniles in need of care. It enunciated the basic philosophy of care, protection, maintenance, welfare,

<sup>61</sup>Vicentnathan SG (2006), Juvenile Justice in India, In Delinquency and Juvenile Justice System in the Non-Western World, (eds) Friday PC & Ren X, New York, Criminal Justice Press, pg- 28

<sup>62</sup>Arulselvam M (2002), Law Relating to Juveniles and Probation, Chennai, Marathi Publications, pp- 226-246

<sup>63</sup>Rathore Vaishali (2019), An Insight Into Indian Juvenile Justice System, Notion Press Media Pvt. Ltd.

<sup>64</sup>Chalraboty T (2002), Juvenile Delinquency and Juvenile Justice in India, In J.A. Winterdyk (Ed.), Juvenile Justice System: International Perspectives, Toronto, Canadian Scholars Press, pp 265-296

training, education and rehabilitation of neglected and delinquent children. In 1974 India declared its National Policy for Children, the policy included training and rehabilitation of delinquent, destitute, neglected and exploited children.

This Children's Act was replaced with the Juvenile Justice Act of 1986. This act could be proclaimed as the first pan-India child welfare enactment which brought about a uniform juvenile justice system in the country by incorporating all child related legislations in the country. It seeks to promote 'the best interests of the juveniles'<sup>65</sup> and also greater power to juvenile courts even to hear capital cases involving juveniles. This JJ act mandated for the first time the care, protection, treatment, development and rehabilitation of neglected and dependent juveniles, and for the adjudication and disposition of delinquency cases throughout the country. The JJA developed separate procedures for juveniles accused of committing a crime and for those considered neglected and dependent children. Juvenile courts were established to handle girls under 18 and boys under 16 accused of committing crimes. Welfare boards were created to deal with neglected and dependent children<sup>66</sup>.

The Juvenile Justice (Care and Protection of Children) Act, 2000 brought in compliance of the CRC after India ratified convention in 1989 replaced the act of 1986. The Juvenile Justice Act of 2000 made more significant strides in providing for legal safeguards, procedures and rights, in addition to rehabilitation services. It saved children from being subject to death penalty. This act was heavily influenced by the 1985 United Nations Standard Minimum Rules for Administration of Justice, the 1989 United Nations Conventions for the Rights of the Child and the 1990 United Nations Rules for Protection of Juveniles Deprived of Their Liberty<sup>67</sup>. More than any other act before, the Juvenile Justice (Care and Protection of Children) Act, 2000 provides legal rights, protection and rehabilitation for juveniles in conflict with law and for children in need of care and protection. If its rationale and suggested practices are followed the Juvenile Justice System will significantly improve.

This act has been further amended in the year 2006 and 2010. Presently India is executing Juvenile Justice (Care and Protection of Children) Act, 2015, after Juvenile Justice (Care and Protection of Children) bill, 2015 received assent on 31<sup>st</sup> December 2015.

It is quite possible to handle the problem of the neglected child through the informal system of social control of the family and the community. It is possible for the social workers and NGOs to look after neglected children on their own with help and support from the government agencies within the given infrastructure. The Juvenile Justice System tries to treat and

<sup>65</sup>Bajpai G.S (2019), Juvenile Justice, Bloombury India, New Delhi

<sup>66</sup>Unnithan N.P (2013), Crime and Justice in India, Sage Publications, New Delhi, pg-309

<sup>67</sup>Vicentnathan SG (2006), Juvenile Justice in India, In Delinquency and Juvenile Justice System in the Non-Western World, (eds) Friday PC & Ren X, New York, Criminal Justice Press, pp: 29

rehabilitate youngsters who become involved in delinquency. The methods can be categorized as community treatment, residential treatment, non-residential community treatment, and institutionalization<sup>68</sup>. In most instances community treatment involves placing the child on probation. When the child is not believed to be harmful to others, he or she is placed under the supervision of an officer of the juvenile court and must abide by the specific rules that are worked out between the officer and the child. In some instances community treatment also takes the form of restitution, in which the child reimburses the victim either through direct payment or through some form of work or community service.

Residential treatment generally takes place in a group home where the juvenile is provided with psychological and vocational counseling. Other forms of residential treatment include rural programs such as forestry camps and work farms. Youngsters placed in non-residential community-based treatment programs live at home and receive treatment from mental health clinics or similar services.

Institutionalization is the most severe form of treatment for juvenile offenders. Institutionalized children are considered as highly deprived class of society. These children are left helpless, abandoned, neglected due to social, economic and personal reasons by the parents/ caregivers and they are deprived of one or more necessities of life. Early separation from parents, deprivation of parental care, love, affection, warmth, security, acceptance and discipline during childhood disrupts their normal socio-emotional development.

The dispensing of distinct treatment to juveniles as obligated under juvenile legislation is defeated if the police treat juveniles in the same manner as they treat hardened criminals. So the Statement of Objects and Reasons of JJA 2000 includes to create special juvenile police units with a humane approach through sensitization and training of police personnel. Accordingly, JJA 2000 envisages the setting-up of the Special Juvenile Police Unit (SJPU) in every district and city, and the designation of at least one police officer attached to a police station as “the juvenile or the child welfare officer”.

Section 63 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2000 states the following points (1) that in order to enable the police officers who frequently or exclusively deal with juveniles or are primarily engaged in the prevention juvenile crime or handling of the juveniles or children under this Act to perform their functions more effectively, they shall be specially instructed and trained. (2) In every police station at least one officer with aptitude and appropriate training and orientation may be designated as the ‘juvenile or the child welfare officer’ who will handle the juvenile or the child in co-ordination with the police. (3) Special juvenile police unit, of which all

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<sup>68</sup> Paulo SérgioPinheiro (2005), World Report on Violence Against Children, New York, United Nations Publication, pp- 195-196

the police officers designated as above, to handle juveniles or children will be members, may be created in every district and city to co-ordinate and to upgrade the police treatment of the juveniles and the children.”

Section 15 of JJA 2000 deals with orders that the JJB can pass on reaching a finding that a juvenile has committed an offence, and sub- section (2) of section 15 states that the “The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognized voluntary organization or otherwise, and shall take into consideration the findings of such report before passing an order.”

The Juvenile Justice (Care and Protection of Children) Act, 2000 prescribes for child-friendly approach and adjudication and disposition of matters in the best interest of the children in the preamble itself. Further, the provision of involvement of social workers and voluntary organizations in the running the institutions, production of children, the functioning of the Competent Authorities and Advisory Boards, have been made to make the institution more homely and child-friendly. Only when the provisions of the Juvenile Justice Act are properly implemented the children will feel happy to stay in these Homes and would enable their proper growth and development. The programmers are likely to be more meaningful which may help to rehabilitate the children in the society. Provisions like Adoption, Foster care and Sponsorship are aimed at rehabilitation and, at the same time, would become the means to deinstitutionalize children.





# **ORIGIN AND DEVELOPMENT OF HUMAN RIGHTS IN INDIA -A STUDY**

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## **Abstract**

The rights may exist as natural rights or as legal rights, in both national and international law. The doctrine of human rights in international practice, within international law, global and regional institutions, in the policies of states and in the activities of non-governmental organizations has been a cornerstone of public policy around the world. The idea of human rights states, "if the public discourse of peacetime global society can be said to have a common moral language, it is that of human rights."

Many of the basic ideas that animated the human rights movement developed in the aftermath of the Second World War and the atrocities of The Holocaust, culminating in the adoption of the Universal Declaration of Human Rights in Paris by the United Nations General Assembly in 1948. The ancient world did not possess the concept of universal human rights. Ancient societies had "elaborate systems of duties, conceptions of justice, political legitimacy, and human flourishing that sought to realize human dignity, flourishing, or well-being entirely independent of human rights"

**Key words:** Human Rights, Political legitimacy, United Nations, Human dignity, Indian Constitution

## **INTRODUCTION**

The modern concept of human rights developed during the early Modern period, alongside the European secularization of Judeo-Christian ethics. The true forerunner of human rights discourse was the concept of natural rights which appeared as part of the medieval Natural law tradition that became prominent during the Enlightenment with such philosophers as John Locke, Francis Hutcheson, and Jean-Jacques Burlamaqui, and featured prominently in the political discourse of the American Revolution and the French Revolution. The philosophy of human rights attempts to examine the underlying basis of the concept of human rights and critically looks at its content and justification<sup>69</sup>.

One of the oldest Western philosophies of human rights is that they are a product of a natural law, stemming from different philosophical or religious grounds. Other theories hold that human rights codify moral behavior which is a human social product developed by a process of biological and social evolution (associated with Hume). Human rights are also described as a sociological pattern of rule setting (as in the sociological theory of law and the work of Weber). These approaches include the notion that individuals in a society accept rules from legitimate authority in exchange for security and economic advantage (as in Rawls) – a social contract.

The basis of most modern legal interpretations of human rights can be traced back to recent European history. The Twelve Articles (1525) are

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<sup>69</sup> Blattberg, C., *The Ironic Tragedy of Human Rights- Patriotic Elaborations: Essays in Practical Philosophy*, (London, 2010), pp. 43-59.

considered to be the first record of human rights in Europe. They were part of the peasants' demands raised towards the Swabian League in the German Peasants' War in Germany. The first article echoes Martin Luther's tract on the right and authority of a Christian assembly or congregation to judge all doctrine, to call, install, and dismiss [theological] teachers, as laid down in Scripture (1523). Luther's doctrine of the priesthood of all believers gave laymen the right to elect their ministers. The Twelve Articles were clearly inspired by the Reformation movement.<sup>70</sup>

## HISTORY OF CONCEPTS

. This right was at the center of the human-rights debate in the sixteenth century, at a time when the term human rights did not even exist yet. This at times dramatic struggle started with Luther's refusal to recant his beliefs before the Diet of the Holy Roman Empire at Worms in 1521, unless he was proved wrong by Scripture. In his view, faith is the free work of the Holy Spirit and therefore cannot be forced upon a person. In particular, as persecuted religious minorities, the Anabaptist and the Huguenots demanded freedom of religion. In the early seventeenth century, Baptist theologians like John Smyth, Thomas Helwys, and Roger Williams published tracts that vigorously defended freedom of conscience.<sup>71</sup>

One theory for the development of the modern concept of human rights is that it was developed during the early Modern period, alongside the European secularization of Judeo-Christian ethics.

The earliest conceptualization of human rights is credited to ideas about natural rights emanating from natural law. In particular, the issue of universal rights was introduced by the examination of the rights of indigenous peoples by Spanish clerics, such as Francisco de Vitoria and Bartolomé de Las Casas. In the Valladolid debate, Juan Ginés de Sepúlveda, who maintained an Aristotelian view of humanity as divided into classes of different worth, argued with Las Casas, who argued in favor of equal rights to freedom of slavery for all humans regardless of race or religion.<sup>72</sup>

In Britain in 1683, the English Bill of Rights (or "An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown") and the Scottish Claim of Right each made illegal a range of oppressive governmental actions. Two major revolutions occurred during the 18<sup>th</sup> century, in the United States (1776) and in France (1789), leading to the adoption of the United States Declaration of Independence and the French Declaration of the Rights of Man and of the Citizen respectively, both of which established certain legal rights. Additionally, the Virginia Declaration of Rights of 1776 encoded into law a number of fundamental civil rights and civil freedoms. The term human rights probably came into use some time between Paine's *The*

<sup>70</sup> Mahajan. B., *Human Rights, A Crowded Field*, The Economist, (London), May 27, 2010.

<sup>71</sup> Clifton E. Olmstead, *History of Religion in the United States*, (New York, 1960), pp. 99-106.

<sup>72</sup> Edwin S. Gaustad, *Liberty of Conscience: Roger Williams in North America*, (Valley Forge, 1999), pp. 28-30.

Rights of Man and William Lloyd Garrison's 1831 writings in *The Liberator*, in which he stated that he was trying to enlist his readers in "the great cause of human rights"<sup>73</sup>.

In the 19<sup>th</sup> century, human rights became a central concern over the issue of slavery. A number of reformers, such as William Wilberforce in Britain, worked towards the abolition of slavery. This was achieved in the British Empire by the Slave Trade Act 1807 and the Slavery Abolition Act 1833. In the United States, all the northern states had abolished the institution of slavery between 1777 and 1804, although southern states clung tightly to the "peculiar institution". Conflict and debates over the expansion of slavery to new territories constituted one of the reasons for the southern states' secession and the American Civil War. During the reconstruction period immediately following the war, several amendments to the United States Constitution were made.<sup>74</sup>

Many groups and movements have achieved profound social changes over the course of the 20<sup>th</sup> century in the name of human rights. In Europe and North America, labour unions brought about laws granting workers the right to strike, establishing minimum work conditions and forbidding or regulating child labour. The women's rights movement succeeded in gaining for many women the right to vote. National liberation movements in many countries succeeded in driving out colonial powers. Movements by long-oppressed racial and religious minorities succeeded in many parts of the world, among them the African American Civil Rights Movement, and more recent diverse identity politics movements, on behalf of women and minorities in the United States.

The establishment of the International Committee of the Red Cross, the 1864 Lieber Code and the first of the Geneva Conventions in 1864 laid the foundations of International humanitarian law, to be further developed following the two World Wars. The World Wars, and the huge losses of life and gross abuses of human rights that took place during them, were a driving force behind the development of modern human rights instruments.<sup>75</sup>

The League of Nations was established in 1919 at the negotiations over the Treaty of Versailles following the end of World War I. The League's goals included disarmament, preventing war through collective security, settling disputes between countries through negotiation and diplomacy, and improving global welfare. Enshrined in its charter was a mandate to promote many of the rights later included in the Universal Declaration of Human Rights.

At the 1945 Yalta Conference, the Allied Powers agreed to create a new body to supplant the League's role; this was to be the United Nations. The

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<sup>73</sup> Hannum, Hurst, *The Concept of Human Rights: International Human Rights: Problems of Law, Policy, and Practice*, (New York, 2006), pp. 31–33.

<sup>74</sup> Boven, R., *The Human Rights Scripture*, Asia Times, Hong Kong, (November 2002), pp. 21–25

<sup>75</sup> Henkin, Louis, *The International Bill of Rights: The Universal Declaration and the Covenants*, International Enforcement of Human Rights, (1987), pp. 6–9.

United Nations has played an important role in international human-rights law since its creation. Following the World Wars, the United Nations and its members developed much of the discourse and the bodies of law that now make up international humanitarian law and international human rights law.<sup>76</sup>

## CATEGORISATION

The two theories that dominate contemporary human rights discussion are the interest theory and the will theory. Interest theory argues that the principal function of human rights is to protect and promote certain essential human interests, while will theory attempts to establish the validity of human rights based on the unique human capacity for freedom<sup>77</sup>

Human rights can be classified and organized in a number of different ways, at an international level the most common categorization of human rights has been to split them into civil and political rights, and economic, social and cultural rights. Civil and political rights are enshrined in articles 3 to 21 of the Universal Declaration of Human Rights (UDHR) and in the International Covenant on Civil and Political Rights (ICCPR). Economic, social and cultural rights are enshrined in articles 22 to 28 of the Universal Declaration of Human Rights (UDHR) and in the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>78</sup>

Opponents of the indivisibility of human rights argue that economic, social and cultural rights are fundamentally different from civil and political rights and require completely different approaches. Economic, social and cultural rights are argued to be:

- Positive, meaning that they require active provision of entitlements by the state (as opposed to the state being required only to prevent the breach of rights)
- Resource-intensive, meaning that they are expensive and difficult to provide
- Progressive, meaning that they will take significant time to implement
- Vague, meaning they cannot be quantitatively measured, and whether they are adequately provided or not is difficult to judge
- Ideologically divisive/political, meaning that there is no consensus on what should and shouldn't be provided as a right socialist, as opposed to capitalist

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<sup>76</sup> *Transnational Corporations Should be Held to Human Rights Standards – UN Expert*, UN News Centre, (October 13, 2003)

<sup>77</sup> *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, UN Sub-Commission on the Promotion and Protection of Human Rights, (January 3, 2008).

<sup>78</sup> Bales, Kevin, *New Slavery in the Global Economy*, (California, 1999), p. 911.

- Non-justiciable, meaning that their provision, or the breach of them, cannot be judged in a court of law
- Aspirations or goals, as opposed to real 'legal' rights<sup>79</sup>

Similarly civil and political rights are categorized as:

- Negative, meaning the state can protect them simply by taking no action
- Cost-free
- Immediate, meaning they can be immediately provided if the state decides to
- Precise, meaning their provision is easy to judge and measure
- Non ideological/non political
- Capitalist
- justifiable
- Real 'legal' rights<sup>80</sup>

Olivia Ball and Paul Gready argue that for both civil and political rights and economic, social and cultural rights, it is easy to find examples which do not fit into the above categorization. Among several others, they highlight the fact that maintaining a judicial system, a fundamental requirement of the civil right to due process before the law and other rights relating to judicial process, is positive, resource-intensive, progressive and vague, while the social right to housing is precise, justifiable and can be a real 'legal' right.

### **Human Rights and The Indian Constitution**

The Constitution of the Republic of India which came into force on 26th January 1950 with 395 Articles and 8 Schedules, is one of the most elaborate fundamental laws ever adopted. The Preamble to the Constitution declares India to be a Sovereign, Socialist, Secular and Democratic Republic. The term 'democratic' denotes that the Government gets its authority from the will of the people. It gives a feeling that they all are equal "irrespective of the race, religion, language, sex and culture." The Preamble to the Constitution pledges justice, social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and fraternity assuring the dignity of the individual and the unity and integrity of the nation to all its citizens.<sup>81</sup>

<sup>79</sup> *United Nations Treaty Collection*, United Nations, Geneva, October 7, 2010.

<sup>80</sup> Alfredsson, *The Universal Declaration of Human Rights: A Common Standard of Achievement*, (New York, 1999), pp. 225-227.

<sup>81</sup> Katherine White. *Crisis of Conscience: Reconciling Religious Health Care Providers' Beliefs and Patients' Rights*, Stanford Law Review, (1999); pp. 1703-1724.

### **Some other Measures of Protection of Human Rights under Indian Law**

1. The Protection of Civil Rights Act, 1955
2. Suppression of Immoral Traffic in Women and Girls Act, 1956
3. Maternity Benefit Act, '1961
4. Dowry Prohibition Act, 1961
5. Equal Remuneration Act, 1976
6. Bonded Labour (Abolition) Act, 1976
7. Employment of Childrm Act, 1938 (Amended in 1985)
8. The Child Labour (Prolibition and Regulation) Act, 1986
9. Juvenile Justice Act, 1986
10. Indecent Representation of Women (Prohibition) Act, 1986
11. Sati (Prevention) Act, ' 987
12. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989
13. The National Commission for Women Act, 1990

### **Conclusion**

The Indian Constitution or any other statutory documents did not define the word 'Minority' in the context it is referred in the contemporary international context. Minorities in India have been recognized only on the basis of "religion or language" contrary UN Human rights context of definition of minorities as groups based on race/ ethnicity/ nationality/ religion or language. The Preamble as amended in 1976 declares the State to be "secular" which is of special relevance for the religious minorities declaring "liberty of thought, expression, belief, faith and worship" and "equality of status and opportunity".<sup>82</sup>

Though the Constitution of India guarantees equality, freedom, justice and human dignity to every citizen, and taken into cognizance the practice of untouchability against the Dalits and has condemned it and made it punishable. Dalits in India face multiple problems from the religious dominant groups and the Governments. Though article 17 of the Indian Constitution forbids the practice untouchability but caste and untouchability is reflected in every single religion of Indian subcontinent, no one is exempt from it. Dalits

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<sup>82</sup> Halbrook, Stephen P., *The Evolution of a Constitutional Right (Independent Studies in Political Economy)*, Oakland,(1994), p. 8-10.



face multiple discrimination in the name of caste and it is related to violation of socio, economic, civil and political rights.<sup>83</sup>

According to the Indian National Human Rights Commission, Dalits are still living in segregated settlements, and work in inhuman conditions. They are not allowed to enter temples, practice the festivals as other Hindus, they cannot drink or dine along with the majority Hindus. One can see the recent conflicts at the time of Hindu festivals. Most of the atrocities against Hindu Dalits are committed by members of the dominant castes. The so-called upper castes or the caste Hindus have never come to support Dalits in crisis and those who are accused are rarely prosecuted

The Indian Constitution is a document rich in human rights jurisprudence. This is an elaborate charter on human rights ever framed by any State in the world. Part III of the Indian Constitution may be characterized as the 'Magna Carta' of India. The Judiciary in India plays a significant role in protecting human rights. The Indian Courts have now become the courts of the poor and the struggling masses and left open their portals to the poor, the ignorant, the illiterates, the downtrodden, the have-nots, the handicapped and the half-hungry, half-naked countrymen.

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<sup>83</sup> McAfee, Thomas B.; Michael J. Quinlan *"Bringing Forward The Right To Keep And Bear"* North Carolina Law Review ,(2005): pp.781-786.

**Self-Help Groups as a tool for  
empowerment of women and poverty  
eradication: An analysis of the  
Kudumbashree programme in Kerala**

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### Abstract

*Women and girls constitute half of the World's population and research has proven that empowering women accelerates development in all fields. Women's existing circumstances are getting worse in developing nations like India. They are viewed as having no voice within their own family. The harsh reality of the society is that women often end up sacrificing their life in a four walled family. Women are still underpaid despite doing greater work for the family and with no pay. Kerala is a state with a large number of educated people, both men and women, who have excellent potential, however we can see that male dominance is prominent in nearly all activities. The fundamental causes of this situation are the social and cultural structure of our nation as well as educated women's reluctance to take on the risk of more responsible activities, particularly in the entrepreneurial sector. Eliminating poverty, empowering women, and achieving self-sufficiency are the core goals of the Kudumbashree programme. It unlocked a fresh door in the history of development. The programme seeks to empower them via group effort. Achieving gender parity in society is made possible by this empowerment process. It is therefore very intriguing to learn how much this initiative has contributed to the empowerment of rural women.*

Gender equality is not only a fundamental human right, but it also forms the foundation for a world that is stable, affluent, and sustainable. A woman has the right to live in dignity, without having to worry or be in need. The reduction of poverty and advancement of development are both facilitated by the empowerment of women. Women who are empowered boost prospects for the future generations as well as the health and productivity of entire families and communities. The fact that gender equality is one of the 17 Sustainable Development Goals emphasises how important it is. (UN. SDGs). The other seventeen goals are acknowledged to depend on achieving gender equality. But the most ubiquitous and persistent type of inequality is discrimination against women and girls, which includes gender-based violence, economic discrimination, disparities in reproductive health, and damaging traditional practises. During humanitarian crises, particularly armed conflicts, women, and girls experience extreme hardship. Numerous organisations and institutions have been active in encouraging gender-sensitive data collection, legislative and policy reforms, and projects that enhance women's health and increase their range of options in life. Women still have a considerably higher likelihood of being impoverished and illiterate than males do, even though numerous international agreements affirm their human rights. Typically, they have fewer access to education, job, housing, credit, and health care than males do. They are significantly more likely to experience domestic abuse and far less likely than men to participate in politics.

As Jawaharlal Nehru once stated, “in order to awaken the people, it is the women who has to be awakened first. Once she is on the move, the household moves, the village moves, the country moves and thus we build the India tomorrow.” (Kaur 2022). Empowering women is essential to achieving universal human rights and sustainable development. Families have a harder time thriving where women's status is poor due to the prevalence of large families. When programmes for population growth, development, and reproductive health focus on women's educational possibilities, status, and empowerment, they are more successful. Every family benefit when women are given more control, and these benefits frequently trickle down to younger generations. Men's and women's roles in society are socially constructed, subject to change, and not biologically established. These responsibilities differ greatly by location and evolve with time, even though they may be explained as necessary by culture or religion.

Thus, since independence, the government has placed a high priority on integrating women into the mainstream of development. An enabling environment with necessary policies and programmes, institutional procedures at various levels, and enough financial resources has always been attempted to be developed to empower women and bring them into the mainstream. In order to assure a steady supply of sufficient resources for women, the Ministry for Rural Development has designated a specific amount of funding as the women's component in each of its programmes.

### **Women Empowerment as a Concept**

Giving power is how we might define empowerment in the simplest sense. The main concept behind the term empowerment is power. Power is defined as the ability and resources to shape one's life in order to achieve desired social, political, and economic goals or position. Control over material resources, brainpower, and ideology is what is meant by power. (Girvan 2007) The word "empower" implies "to grant the means, ability, or authority" in Webster's English Dictionary. Empowerment suggests a person's attitude and state of mind. It is a process by which individuals or groups gain a greater sense of mastery or control over their own lives and the choices that have an impact on them on a daily basis.

Any method that gives women more autonomy by sharing pertinent information and giving them control over variables that affect their performance is referred to as women empowerment. A fundamental component of empowerment is awareness. To create self-control, self-sufficiency, and self-reliance as well as freedom of choice and action, one needs to be aware of their rights.

Women's empowerment is the process of giving women the authority they need to recognise their rights and carry out their obligations to others and to themselves in the most efficient way possible- the development of personal

abilities, decision-making ability, understanding of rights and privileges, and self-assurance. In order to challenge and end their own subjugation, women must be able to organise themselves, become more self-reliant, assert their autonomous right to make decisions, and manage resources. This process is known as women empowerment. (Mandal 2013).

The power balance between men and women is equal in this situation, and no party has dominance over the other, which is another definition of empowerment of women. A key element in ensuring women's socio-economic security is to raise the awareness of their rights and responsibilities as well as their access to resources. Better healthcare for women and children, equal ownership of productive resources, increased participation in economic and commercial sectors, awareness of their rights and responsibilities, raised living standards, and the development of self-reliance, self-esteem, and self-confidence are all examples of empowerment. The welfare of women, the fulfilment of fundamental needs, access to resources, conscientiousness to achieve gender equity, involvement in decision-making alongside men, and control, which refers to the highest level of equality and empowerment, are all included in the framework of empowerment.

### **Importance of Women Empowerment**

Women's empowerment is one strategy for helping both disadvantaged and more affluent women realise their value and potential in a society where men predominate. The majority of women in today's world have realised and taken full advantage of their potentials in the best ways possible thanks to education and family advantages. Unfortunately, there is still a segment of the population made up of women who lack the education and self-assurance necessary to establish themselves in the culture that is predominately male and make their presence felt. Women must feel worthy, confident, and free to make their own decisions on both their personal and professional lives. In so many ways, gender bias is irrational and unjust; it prevents strong people from not only reaching their potential but also from leading independent lives free from oppression and fear. Women's empowerment aims to boost their self-esteem by giving them everything within their ability to enable them to recognise the skills that are hidden within of them and waiting to be discovered. Only improved knowledge, awareness, and a place to express oneself freely allow for the correct fostering, refining, and honing of those skills.

The process of empowering women involves several steps:

1. The first step starts with oneself. A woman grows to feel in control, in command, and self-sufficient over the material and innate decisions she must make.

2. In the second step, interpersonal empowerment takes occur. Here, a woman exerts influence over another woman's ability to make decisions by coming into contact with her and cooperating with her.

3. They highlight the objectives for social action and social transformation in the third step. A community development programme is created by a team. However, there is also a chance of a backward linkage. An initiative for community development may result in both interpersonal and individual empowerment.

Women's emancipation has been happening practically everywhere in the world, but mainly in liberal democracies, the level of empowerment, however, differs from area to region, from country to country, and even from place to place within a country. (Mandal 2013). Nevertheless, the government places a high priority on women's empowerment in order to promote the overall advancement of women. A very successful women empowerment mechanism has been the presence of Self-Help Groups (SHGs).

### **Role of Self-Help Groups in Women Empowerment**

In many areas of the nation where poverty and unemployment are still problems, women's empowerment has attracted attention, and policymakers have been urged to make decisions at various levels of authority. A strategy for empowering disadvantaged women has been recognised as grouping them into small groups so they can profit from their joint efforts. Thus, the development of the Self-Help Group system in India serves as a platform for women to escape the monotony of their everyday lives. Their welfare and growth are also goals of this system, which will assist them in playing the role that fits best with their intrinsic abilities. In India and other countries, the self-help group system has been acknowledged as the finest method for empowering socioeconomically women who live below the poverty line.

Self-Help Group (SHG) is a comprehensive programme for microbusinesses that addresses all facets of self-employment, the organisation of the rural poor into self-help groups and the development of their capacity, the planning of activity clusters, the development of infrastructure, technology, credit, and marketing. It places a focus on activity clusters based on resource availability, worker skill levels, and market accessibility. Self-Help Groups are informal, peer-run, self-governing groups of persons from similar socioeconomic backgrounds who want to work together to accomplish shared goals. (SEWA 2022). Here, impoverished individuals voluntarily band together to save whatever money they can out of their earnings, to agree to mutually contribute to a common fund, and to lend to other members for the purpose of addressing their immediate and productive needs.

More women are encouraged to form SHGs and are made aware of the value of SHGs in empowering them. (Ghose 2022). This aids in group decision-making

for the benefit of the women and also makes them feel more capable and confident.

After women are exposed to group support and build social capital through participation in regular meetings, during which they receive access to resources in the form of credit, training, loans, or capital, increases in income, savings, and/or loan repayments, and improvements in skills follow. With the help of this process, women are able to translate their preferences into desired actions, altering their spending and saving habits, and therefore gaining economic, political, social, and psychological empowerment.

SHGs are beneficial for three aspects of women's empowerment. Women who participated in SHGs were, on average, more economically empowered than non-participants, meaning they had better access to, ownership of, and control over resources. (Shireesha 2019). In addition to having greater mobility, female participants had greater social power than non-participants. Additionally, SHG members had more influence over decisions about the size of the family, but only if the SHGs had a training component. Members of female SHGs were also better able to engage in decisions affecting community members' rights, entitlements, and access to resources, which gave them more political clout. SHGs have a big impact on how the rural economy is changing. In terms of outreach, social standing, and sustainability, its unheard-of expansion aids the resurgence of the weaker segment of society. (Devika 2007). In this context, the Kudumbashree project in Kerala yields much importance.

### **Kudumbashree: Its Genesis**

The majority of women-only SHGs in India are found in Kerala, specifically the "Kudumbashree" group. On May 17, 1998, the Kerala government introduced this initiative for underprivileged women. Neighbourhood Groups are "Kudumbashree's" grassroots organisations (NHGs). (Rajagopal 2020). NHGs are what Kudumbashree uses to operate. It is a grassroots self-help programme run by underprivileged women. The Kudumbashree scheme seeks to empower women as a means of eradicating poverty.

The State Poverty Eradication Mission (SPEM) of the Government of Kerala is responsible for implementing the poverty eradication and women's empowerment programme known as Kudumbashree. The name Kudumbashree means "prosperity of the family" in Malayalam. The name refers to the Kudumbashree Community Network as well as the "Kudumbashree Mission" or SPEM. The term "Kudumbashree" may refer to either the Kudumbashree Community Network or the Kudumbashree Mission, or to both.

Following the advice of a Task Force comprising three individuals chosen by the State government, Kudumbashree was established in 1997. The Peoples' Plan Campaign, which aimed to create the Ninth Plan of the local governments

from below through the PRIs, and the devolution of authority to the Panchayat Raj Institutions (PRIs) in Kerala were both factors in its establishment.

All adult women may join Kudumbashree, with a cap of one membership per family. Kudumbashree was recognised in 2011 by the Ministry of Rural Development (MoRD), Government of India, as the State Rural Livelihoods Mission (SRLM) under the National Rural Livelihoods Mission (NRLM). (Ali 2019).

As a programme to end poverty, Kudumbashree was started and given a deadline. It had its own methods for lifting families out of poverty. Its efforts were concentrated on eradicating poverty, which was seen as the prerequisite for women's advancement. Over time, Kudumbashree Community Network transformed into a genuine development force that collaborates closely with regional authorities. Without a question, this in and of itself contributed to the empowerment of women Kudumbashree members. Several leaders rose through the ranks of the process to become influential figures in politics and public society.

### **Kudumbashree as a Poverty Eradication and Empowerment programme**

An innovative programme for reducing poverty was tested in 1992 with community involvement in seven wards of the Alappuzha Municipality. In this experiment, urban-based services (UBS) and urban basic services for the poor (UBSP) programmes were implemented by a three-tier CBO made up of low-income women. In this investigation, the poor families were located using 9 "nonmonetary criteria." Later, this woman-centred, inclusive, and convergent strategy to combat poverty was known as the "Alappuzha Model." In 1993, this was expanded upon and tested in all 36 wards of the Alappuzha Municipality. The Alappuzha Model's effectiveness convinced the State Government to expand it across the State's whole urban districts (58 Urban Local Bodies) in 1995. The Kerala Government expanded the "Urban CDS Model" throughout the entire State under the name "Kudumbashree" in 1998 as a result of the success it had seen. The programme was gradually expanded to include rural areas (Kudumbashree 2022).

In essence, Kudumbashree is a state-wide community network that serves Kerala. Neighbourhood Groups (NHGs) serve as primary level groups, Area Development Societies (ADS) are at the ward level, and Community Development Societies (CDS) are at the local government level. It is possibly one of the biggest women's networks in the entire planet. The community network's primary characteristics include democratic leadership and support networks built from the "Kudumbashree family," even though its main goals are the eradication of poverty and the empowerment of women.

In three stages between 2000 and 2002, the Kudumbashree community network was expanded to include the entire State. The Kudumbashree network had 2,94,436 NHGs attached to 19,489 ADSs and 1064 CDSs as of



September 15, 2021, with a total membership of 45,85,677 women. (Kudumbashree 2022).

**Neighbourhood Groups (NHGs):** The Kudumbashree community organisation is composed primarily on neighbourhood groups (NHGs). A NHG is made up of ten to twenty local women. The bylaws of Kudumbashree CDS govern the NHGs' membership, organisation, and duties.

**Area Development Society (ADS):** The Kudumbashree community organization's middle layer is called the Area Development Society (ADS). Local governments' ward level is where ADS is formed. With the exception of tribal ADSs, which are founded with special approval from the government, there is a one-to-one relationship between wards and ADSs. The ward member is the ADS's patron in a Gram Panchayat. Ward council members support the ADSs similarly in Municipalities and Municipal Corporations. ADS functions as a subcommittee of ward development committees when they are present. ADS is not a recognised business entity.

**Community Development Societies (CDS):** The three-tiered Kudumbashree community organization's apex entity is the Community Development Society (CDS). It operates at the local government level in both urban and rural areas. While there is normally one CDS for each local government, there may be several CDSs for metropolitan government institutions that have a sizable number of NHGs and ADSs.

Through "auxiliary" organisations, Kudumbasree expands its membership beyond the initial single family. It is interesting that Kudumbasree, an excellent example of a programme for the economic empowerment of women, has total savings in its core neighbourhood components of Rs. 5586.68 crore. (Starly 2022). Though the Kudumbashree initially concentrated on finance and savings operations, but over time, it played a significant role in integrating women who were restricted to their homes into mainstream society. They have been integral parts of grassroots planning for the creation of jobs, the eradication of poverty, and the empowerment of women. A testament to the influence the Kudumbashree has had on Kerala society is the widespread mobilisation of women in local activities.

### **Poverty Eradication and Empowerment techniques employed by Kudumbashree**

#### **a) Complementary Involvement in Family Decision-Making**

The degree of social development of women is indicated by their involvement in household decision-making. Women's economic independence and their proportional contribution to the family fund are regarded as important elements that affect their involvement in family decision-making. Focused group discussions revealed that women participating in the Kudumbashree programme made more decisions for the family than other women did. Due to traditional standards and the perception that they shouldn't need to leave

their homes, women were typically kept within their homes. The women had to leave their houses in order to participate in NHG/SHG meetings and activities, creating chances for them to acquire social autonomy. Many women now have the option to travel for various reasons in addition to attending meetings and NHG/SHG events. This boosts their ability to visit medical facilities alone, without the company of male family members, for either themselves or their children. This results in more empowering behavioural changes.

#### b) Effect on Earnings

The primary goal of programmes for women's empowerment is to improve the income of low-income women so that it can be used to help the entire family and provide specific benefits to each low-income woman, the family, and the community as a whole. Poor women now have a place to go and possibilities thanks to the Kudumbashree. Savings by underprivileged women helped them have more control over their finances and access to money when they needed it. The women are now able to feel safer amid emergencies thanks to this. Women take pride in having loans that have allowed them to purchase property and homes in their names. Women have access to productive assets like land leases and tree leases through the use of loans for conducting entrepreneurial activities. Women do ask men's permission before taking out loans and using them for specific purposes. Self-employment activities are typically shared by men and women, yet there are also instances of women engaging in the activity on their own.

#### c) Financial Independence

One of the main focuses of Kudumbashree Mission is economic empowerment, along with social empowerment and women's empowerment. The Mission's strategy is to encourage the economic empowerment of the underprivileged and support regional economic growth. The Kudumbashree family network is the focus of numerous of the Mission's economic development programmes for women and young people. Collective farming, animal farming, and enterprises are key Kudumbashree programmes. However, the initial step in local economic growth has been microfinance, which aids the underprivileged in gaining access to institutional money.

#### d) Social Empowerment

The foundation of Kudumbashree's social empowerment programmes is a concern for inclusivity. These initiatives were born out of Kudumbashree's recognition of the necessity for precise measures to include the most vulnerable and underprivileged people. Initiatives for social empowerment concentrate on the poor and the mentally ill. In order to stop the intergenerational transmission of poverty, they also involve children by educating them about their rights and helping them grow into groups that take effective action.

#### e) Political Empowerment

Along with social and economic empowerment, political factors were considered as well. Women can take responsible roles in a variety of committees at the three-tier Panchayat system and urban local councils, participate in other government organisations, run for office in the Gram Sabha, and have membership in other government organisations. Kudumbashree provides numerous opportunities for women to participate in the programme for the development of women at various levels, including planning, mobilising resources, implementing, and monitoring the works.

#### f) Educational Empowerment via Capability Development

No formal school can match the self-learning process that these people go through physical experience in mobilising thrift, disbursing loans, operating bank accounts, approaching banks for loans, and engaging in small livelihood activities. This process enables them to succeed in life and provides an educational opportunity that no formal school can match. In order to stop the transmission of poverty from one generation to the next, they are also given the opportunity to inquire about the educational progress of their offspring. Another crucial issue that Kudumbashree focuses on is education. Opportunity for education, both general and higher education, is denied by poverty. The socioeconomic analysis of the test-failing students reveals that the bulk of them come from BPL homes. As a result, Kudumbashree has helped the CBOs establish remedial education facilities, plan summer school for high school students, and make sure that parents attend PTA/Mother PTA meetings. There are also established special programmes to increase youths' employability as well as "Finishing schools."

#### g) Members' capacity building

Deprivation of capability is one of the main reasons of poverty, according to Kudumbashree. It was obvious that in order for a programme to reduce poverty to last over the long term, it must address this problem. According to Kudumbashree, building capacity is a long process that enables the underprivileged to become independent decision-makers. From the beginning, Kudumbashree started a number of initiatives to increase the capacity of the underprivileged. This comprises community-wide awareness campaigns, CBO member human resource development initiatives, skill-building initiatives, entrepreneurial training programmes, skill upgrades, and performance improvement initiatives (PIPs) for business owners.

As a result of the above techniques, the Kudumbashree project has introduced numerous creative programmes for the empowerment of women. It has improved women's economic independence and self-reliance.

Some of the successful activities employed by Kudumbashree are as follows:

- **Setting up Gender Resource Centres**

To develop gender equality in governance by organising and implementing programmes and projects that address gender concerns, challenge power dynamics, and advance leadership.

- **Snehitha - Help Desk for Gender**

Under the Kudumbasree mission, Snehitha operates a gender assistance desk around-the-clock. It seeks to provide assistance and support to women in society who lack protection.

- **Sthree Sakthi Portal**

The Sthreesakthi web portal was created with assistance from the Centre for Development of Advanced Computing (CDAC) and the Department of Information Technology, Government of India, in an effort to make the GSLP a fruitful and successful venture.

- **Project Padheyam-Food Parcel Distribution**

As a part of janakeeyasoothranam, the Kerala development model, the Thiruvananthapuram district panchayat began and carried out the Padheyam project, which aims to give food boxes daily to all those who are hungry. This project's backbone, the kudumbasree, plays a significant part in its implementation. The Kudumbasree volunteers prepare and deliver high-quality meals to the designated beneficiaries in accordance with the list provided by Grama, District Panchayath.

- **Amrutham Nutrimix Consortium**

Since 2006, Kudumbashree has worked in conjunction with the Social Welfare Department to provide Take-Home Rations for Supplementary Nutrition at the State's Anganwadies.

- **Janakeeya Hotel**

As part of the Covid control programme, the State Government has created the "Janakeeya Hotel," a food distribution system with the aim of offering affordable food to everyone. Kudumbasree is totally in charge of carrying out the plan. (Starly 2022).

One of the main aims of Kudumbashree, which was established in 1998, was to end poverty within ten years, or by 2008. With the help of the Kudumbashree, Kerala has mostly been freed from poverty. The poverty rate in Kerala's rural and urban areas was 25,76% and 24,59%, respectively, prior to the introduction of PPC and Kudumbashree. The Rangarajan Committee on Poverty Estimation estimates that in 2011-12, Kerala's poverty rates fell to 7.3% for rural residents and 5.3% for urban residents, respectively. The baseline report of the National Multidimensional Poverty Index, issued by NITI Aayog, indicates that only 0.71% of the population in Kerala is multidimensionally poor, the lowest percentage in the nation. All of these

indicators suggest that Kudumbashree has been successful in lowering the poverty rate over time. (Chathukulam 2022).

Under the leadership of local governments, the Kudumbashree has steered itself to excellence. Kudumbashree's work has earned it countless national and international accolades, (Kudumbashree 2022) and as a result, it has become an inspiration for people in other states and nations. Thus, Kudumbashree continues to serve as an example for the universe through its remarkable contribution in women empowerment.

## **Conclusion**

Women are change-makers who promote development, as demonstrated by Kudumbashree. They are entitled to equal opportunities and treatment in all respects. The organisation is perceived differently by different people since Kudumbashree has impacted the lives of numerous women. For many people, it is a source of relief. For others, it is a safe haven where they may express all of their emotions. Many people have various opinions regarding it. For many, it serves as a helping hand. In terms of politics, society, the economy, and culture, it aids in empowering women. Kudumbashree aids in the process of empowering women in all these ways, which results in completely empowered women. Women's confidence and morale soar as a result of taking part in several income-generating and developmental activities.

Kudumbashree, the poverty eradication programme in Kerala, has matured into a strategic instrument for eradicating poverty and empowering women. After the execution of many projects under the Kudumbashree, the standard of living of women and the entire society began to rise. Kudumbashree continues to play a significant role in the success of the decentralisation process of people's planning adopted by the Government of Kerala through local bodies.

Women who were formerly considered to have no voice and no influence began to see their own inner strength, power, and potential for personal development, as well as their involvement in altering their own futures. For their offspring, their families, and the wider society, the process of empowerment becomes a beacon of hope. The history of development is expanded in new ways. It is possible to draw the conclusion that in the years to come, the Kudumbashree initiative will significantly alter the lives of the poorer segments of society.

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# **VIOLATION OF HUMAN RIGHTS ON ARCHAEOLOGICAL EXCAVATION WITH SPECIAL REFERENCE TO PROPERTY RIGHTS**

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**Abstract**

Human beings inherit rights irrespective of their nationality, sex, race, religion, language, ethnicity or any other status called Human rights. These rights set up standards to recognize and protect individual dignity. The right to property under the Part III of fundamental rights was repealed in the 44th Amendment Act of 1978, nevertheless, it guarantees two provisions under which no property may be taken from a citizen unless there is legal authority to do so. Like every known Human right, the property right is an individual's natural and intrinsic right. However, a citizen's right to possess or acquire property often clashes with the state's property rights on land acquisition which reflects in the construction of public transportation, building public infrastructure, and other public beneficiary works including archaeological fieldwork. The study of the human past with the material remains is commonly known as Archaeology. Archaeologist study and analyze material remains such as million-year-old fossils, human remains, animal remains, plants, stone lithics and so on through field work such as excavations and explorations. However, the conclusive comprehensive study can be done through archaeological excavation which entails systematic digging of the selected potential region. The archaeological sites to be excavated or have already been excavated contain significant and irreplaceable information about the past. The challenges like antiquities smuggling and vandalism on monuments and archaeological sites result in the rejection of cultural rights that permits people to understand and identify their cultural roots. However, the field of archaeology and its fieldwork facilitates cultural rights, it also impacts the private property rights of the common man. The main objective of the study is to understand and identify the challenges faced by the archaeologist in the excavation of culturally potential sites without disturbing the property rights of the common man. The study also focuses on the violation of property rights in human rights as a consequence of archaeological excavation and explorations.

**Keywords:** Human Rights, Property Rights, Archaeology, Excavations and Cultural Rights

**Introduction**

Human rights are indispensable rights enjoyed by human beings and these rights are inherited by birth. Human rights protect the dignity of a citizen and it also governs the relationship of an individual with the state and the obligations of the state towards an individual. The massacres, genocide and other cruelties toward humanity in the two world wars exposed the absence of standard Human rights protection and the lack of observant organizations to safeguard the protected rights. The very first initiative to institute Human rights globally was the universal Declaration of Human Rights (UDHR), an attempt to establish a human-rights to be globally protected. The Universal Declaration of Human Rights consists of 30 articles, Article 17 of UDHR on the

Right to Property is stated as the natural rights and inherent rights that allow an individual to own and possess private property. Rendering to the 44<sup>th</sup> Amendment to the Indian Constitution, the Right to property is no more considered a Fundamental Right and article 31 was eliminated from the Indian Constitution. Nevertheless, Property Rights still maintain to be a natural right and adequately protected by the state. Despite this, with the power of law, the Government can take over private property under Article 31(1) of the constitution. Archaeology is the study of human history through Material remains. This field has the potential of changing a country's heritage, history and cultural aspects. Using the available resources, the archaeologist throws light on the historical facts and events in a descriptive manner. Archaeological discoveries such as monuments, stone structures, coins, and artefacts are vital sources of our cultural heritage. Human rights also have provisions for protecting cultural heritage to safeguard it from negative influences. The Archaeological sites, objects, expressions, and knowledge are only deemed worth preserving for future generations under cultural rights. The article will discuss the ever-going conflict between property rights and cultural rights and ironically both rights are human rights that are in line with human dignity.

### **Human Rights**

Human rights are the non-discriminatory rights to protect an individual's identity and dignity. All Human beings are entitled to these rights and it is governed by the state to avoid Human exploitation and ensures no individual is excluded from these Rights. Individual human rights include social, civil, political, cultural, economic and collective rights. The landmark developments of Human rights were set in Britain with the introduction of the Magna Carta of 1215 and the Habeas Corpus Act of 1679. However, the implementation of standardized human rights globally took place after the miseries of two world wars in which the world had witnessed the worst human massacres and exploitation including genocide like the Holocaust. The very first initiative to institute Human rights globally was the universal Declaration of Human Rights (UDHR) which is considered to be a milestone in the history of Human Rights. The document was drafted by representatives from various cultural and legal credentials and UDHR was proclaimed on 10<sup>th</sup> December 1948. It is considered to be a general standard for human rights globally and an attempt to establish a human-rights to be globally protected. Furthermore, the core of international law and relations revolves around Human rights which represent basic values common to all cultures. Human rights promote universality, indivisibility, equality, inclusion, participation, accountability, interdependence and inter-relatedness.

### **Concept of Property and Property Rights**

In the past, property right has always been a controversial and complicated issue between the 'haves' and 'have-nots'. Even before the existence of organized forms of governments, the right to own private property had

existed but the rights were not equally distributed to all. Many Historical events that shook and changed the world such as the French Revolution and Russian revolution fought against the privilege of owning or possessing surplus private property in modern times. According to French philosopher John Locke, property rights should be a natural-rights like life and freedom. Property rights have a social rights trait that encourages the distribution of social wealth and goods. Like several social and economic rights such as the right to work, the right to education, the right to adequate housing, and the right to enjoy the benefits of scientific progress the property right has some major implications. The violations of the right to property include extreme administrative difficulties in the registration of land, forcible eviction or relocation, denial of water rights and other essentials for people who used the land for many generations and relocating people for the development of government projects without sufficient compensation.

Property Rights are natural rights that permit people to fully own and employ private land, assets and resources without intrusion from the government or any other entity or individual. Indian Constitution, the Right to property is recognized as a Fundamental right according to Article 31 in Part III which permits a citizen to fully own or possess or employ private property in the form of land, assets and resources. However, this article in the Indian constitution was later repealed with the 44<sup>th</sup> Amendment to the Indian Constitution. Article 300A of part XII in the 44<sup>th</sup> Amendment to the Indian constitution established Property rights as a legal and constitutional right. An individual's property would be violated if he/she is ejected from their property by force without ensuring the due process of law outlined in Article 300 A of the Constitution. The Supreme court has complete jurisdiction to pass a special leave or decree on violation of property rights. Nevertheless, the right is neither properly defined nor adequately protected for many Indians and several regulatory restrictions prevent individuals from freely employing their property. The protection of private property rights influences the country's prosperity and allows people to be entrepreneurial. Property rights can be regulated, for instance, limited, shortened, or modified, without requiring a constitutional amendment, through ordinary parliamentary legislation. Property rights are significant to economic growth, and security, empower vulnerable, women's right to property, aid in recognizing indigenous rights, eradicate poverty and prevent informal settlements.

### **Archaeology and Cultural Rights**

Archaeology is a scientific study of the human past through cultural remains which is descriptive work. The field of archaeology has a huge impact like changing the cultural history of one country or a place or a person. For instance, the discovery of the Indus Valley Civilization has changed the chronology of India History and pushed it way back to 3500 BC. The objective of an archaeologist is to reconstruct history with available sources; hence it is the interpretive description of the human past. In the recent past, many

archaeological discoveries were made by a common man in unexpected circumstances in the private property owned by an individual in the form of Coin hoards and other antiquities. The archaeological fieldwork can be done through excavation and exploration where the archaeologist study and analyze the animal remains, plant remains, fossils and human remain. Furthermore, Archaeology is the only primary source for the study of pre-history, proto-history, ancient culture and also the extinct culture. The most significant fieldwork in the field of archaeology is Excavation which can be classified into planned, rescue and accidental fieldwork. Analyzing sources includes studying the earliest stone tools, simple tools to complex machines, and earliest temples, tombs, cathedrals, pyramids and houses.

Cultural rights are considered to be a second generation of human rights. This right is most prominently in the International Covenant on Economic, Social and Cultural Rights of 1966. It is known as individual human rights in the scope of culture to participate in and necessitate the state to preserve and promote infrastructure of culture through education. Cultural rights are clearly defined rights that protect cultural heritage and are also related to individual identity and the development of a personality-correlating culture. Generally, the protection of cultural rights may indirectly protect human rights as the main objective of the rights is to protect human identity. It is been said that cultural identity in its dimension of human identity is a facet of human dignity. Destruction of culture or cultural property with the ulterior intent to eradicate a group identity is a human rights violation; for example, Holocaust. Cultural property and cultural heritage protection concurrently protect human rights as it assumes the observance of certain values. In its cooperative dimension, cultural identity contributes to constituting a group hence a factor causing the rise of the right to self-determination. As mentioned before, Archaeology is a field that identifies and analyses the cultural background of a place and its people. Hence it a cultural right of a group of people or an individual to study and appreciate their cultural roots through archaeology which is one of the primary source studying human past and the cultural heritage of humans.

### **Archaeological Fieldwork**

In the field of archaeology, to analyzing the potential site is done thorough archaeological exploration and excavation, wherein the first is used for identifying potential site and the latter is used for analyzing the one with systematic dig to study the stratigraphy of the site. The surgical aspect of archaeology is Excavation which plays a vital role in the discovery of archaeological sites and considerable portable artefacts or antiquities. Excavations are carried out with all skilled craftsmanship on the buried landscape that has been built up for more than a hundred years. Excavations can be classified based on the purpose of the planned excavation, rescue excavation, or accidental excavation. The major aim of Archaeological excavation is to unearth the buried evidence in an archaeological site. An archaeologist goes through field training as an ordinary digger, and then as a

site supervisor. Over the years of training, his work includes as a recorder, surveyor, and photographer, ultimately these skills are required before anyone can organize and direct an excavation himself. Educational institutes which are associated with archaeology or History such as museums, universities, and government archaeological departments mostly organize training excavations. The tools used in the excavation are a trowel, penknife, and brush. Different styles of tools and techniques are employed in the archaeological excavation by the archaeologist of different kinds of sites. For example, the opening of the tomb chamber in an Egyptian pyramid is different from the excavation conducted in western Europe or Tamil Nādu Megalithic burials.

Often archaeologists also indulge in exploring sites provisionally by sampling cuts also known as Sondages. This is the method used by the archaeologist before engaging in large sites such as Keezhadi, Amirthamangalam, Athirampakkam and so on. Irrespective of the site and the extent of the excavation conducted on the site, the tools and techniques are common to all digs. Frequently the artefacts that are recovered are almost vague from nonarchaeological aspects of the buried landscape. The other arduous and paramount task in the field is the recording of artefacts and antiquities found on the site by word, diagram, survey, and photography. Occasionally extent of all excavation is destruction either by housing construction or gravel digging. Hence, the archaeologist needs to take field notes before his/her published report becomes a primary archaeological document. According to the archaeological fieldwork, an excavator is an interpreter of what they observe or assumed they saw, and the nearest conclusion can ever get to archaeological facts as established by excavation. In some cases, excavators leave such a fine record of their digs so that subsequent archaeologists can re-create and reinterpret what they saw and found to avoid the delay of publishing the results of excavation within a reasonable time. Since it is considered to be a liability from the point of view of the archaeological method where excavation is not complete until the printed report is accessible. Some cases such as quarrying, road construction, clearing the ground for airports, house construction of houses, public building and factories commonly threaten the destruction of archaeological and potential archaeological sites. There is an emergency excavation or savage excavation for rescuing material remains and protecting it from obliteration. For instance, a savage excavation was conducted in Nagarjuna Konda in Andhra Pradesh before the construction of the Nagarjuna Sagar dam, likewise, a rescue excavation was conducted in western Europe after the partial destruction of cities by bombing during World War II.

### **A dispute between Cultural Rights and Property Rights**

Through the cultural identity' reference, both cultural heritage and cultural rights are linked which serve as communicating conduits jointly cross-fertilising cultural rights and cultural heritage norms. Cultural identity is an element of an emerging right to human dignity as it is also part of an

individual's personality. According to article 3 of the European Convention on Human Rights, Cultural identity becomes more and more a separate human right also under international law. The foundation of cultural heritage protection might result in an alignment of cultural heritage with human rights, which will further lead cultural heritage to the level of subjective rights to cultural heritage. In conclusion, cultural heritage, through its instituting factor of being pertinent to cultural identity, is closely associated with the right of people to self-determination.

The cultural identity of an individual can be described as one of several factors that might distinguish a group that may be enabled to the right to self-determination even with its uncertainties about the holder and the scope of the right. International human rights have drawn a list of rights that incidentally or directly protects cultural heritage. These individual human rights also protect characteristics of cultural heritage and are specific expressions of human dignity, which might provide an argument for an emerging individual right to cultural heritage. Generally raising cultural heritage to such a preeminent position of a subjective individual right would not be without problems for the protection of human rights. Certainly, the wider the protection of culture is drawn, as imitated in a widening of the definition of culture from absolute universal cultural property to subjective and more relative or pluralist forms of intangible expressions and diversity. This will result in difficulties to establish the content of such a right.

The cultural rights of an individual or a group of people can be extended to the archaeological excavation which creates a cultural appreciation and identity of an individual. Though a clash between archaeologists excavating and the people who own potential archaeological sites. There are various problems related to the issue such as trust in the archaeological team, the fear of losing the land rendering to the cultural remains uncovered from the land, fear of losing the purpose of land such as fertility of the land in agriculture and so on. But the organization excavating in India are restricted to governmental organizations like the Archeological Survey of India. However, the right to decide to lend the land for excavation ultimately rests on the owner of the land. In the circumstance of a major discovery or breakthrough, in which the site can be turned into a historical destination with a site museum or so, adequate compensation for the land is to be paid to the owner. This is a rare occurrence where the government buys the land by paying good compensation to the owner. Nevertheless, in the case of archaeological excavation, the land is borrowed for a certain period to understand the cultural stages of the places through the study of stratigraphy, after which the land is returned to the owner. But the question arises whether the land is intact with its pristine self.

A dispute between human rights such as property rights and cultural heritage becomes very obvious where there are deeply ingrained practices that fulfil the definition of cultural heritage but at the same time violate human rights. There may even be contradictory and commonly exclusive ways of protecting

cultural heritage, for instance, excavations to preserve cultural heritage which would have to happen in places of worship of the indigenous population. Ironically, the ideology of Human rights can be manipulated by using the jurisdiction for the restriction of human rights by those who violate these rights. Furthermore, Cultural Heritage also is in conflict with and even threatens, human rights and human rights might oblige to eradicate 'outdated' cultural practices and heritage. Thus, the clash leads to the principle of the arguments around the universal relative nature of human rights themselves.

## **Conclusion**

Human right deals with the natural rights that are inherited by the people that are governed by the state. It is a non-discriminatory right that can be classified as social, civil, political, cultural and collective rights. These rights are exercised by all humans with uniformity and inalienability. One of the significant human rights is Property rights and it is one of the rights that existed for a longer period. But the distribution of rights is not equal and most of the revolutions in the past revolved around the idea of uniform property rights. The exploitation of the wealthy class on the poor by owning more private lands infuriated the common man which laid the foundation for almost all of the revolution. Property rights have always been controversial right but these rights exhibit social wealth and goods. Property rights allow an individual to own or possess or yield private property. Likewise, cultural rights are the second generation that emphasises the right of an individual on their cultural identity and cultural appreciation. These cultural rights promote peace and harmony and emphasis on unity through cultural similarities.

The cultural rights of the people can be promoted through historical and cultural heritage awareness among the people. Discipline such as history, archaeology, geology, anthropology and so on gives more significance to these cultural rights. The main focus of this study is on the field of archaeology, its cultural contribution and also the violation of another human right namely property right. "In a simple direct sense, archaeology is a science that must be lived, must be" seasoned with humanity". Dead archaeology is the dried dust that blows," said Sir Mortimer Wheeler. Archaeology is the field that provides ample resources on the history of man and the cultural evolution of a place or group of people. The archaeological excavation is conducted in the buried potential sites to unearth the human cultural history. The main source for conducting this excavation is land, this land can be owned by both private and public authorities. One of the problematic tasks in the archaeological excavation is finding the potential site and not being able to get access or permission to dig the place. The major cause for these situations is a lack of awareness among the common man. In most cases, once the site is excavated the land would be returned to the owner whereas rarely the land would be seized from an owner, even in that case adequate compensation is paid for the land. This case is a rare occurrence in which the archaeologist feels the cultural remains unearthed in the land signify the country's cultures and needs

to be preserved for the future generation to witness, for example, Harappa, Amaravati, Keezhadi, etc.

However, the ultimate decision for lending the land to the archaeologist or the institution for a stipulated period rests upon the property owner. The fear of losing the land and also the fear of losing the authentic nature of the land, especially the fertility of the land led to the rejection of cultural rights. Furthermore, the denial of the land can result in not knowing an important piece of our cultural past that can change the history or view of people. To conclude the violation of property rights in the field of archaeology rarely takes place. In some cases where the archaeological results showcase an extraordinary cultural impact and the evidence of these cultural remains needs to be preserved, the land was taken over by the government in the light of throwing cultural awareness and also for promoting cultural rights for the people. In return, the landowner would be given full compensation. Nevertheless, the right to keep the property after archaeological excavation or not lend the property for an archaeological excavation always lies on the property owner, without the consent of the property owner, excavation cannot be carried out even by a public organization like ASI or the state department of Archaeology.

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# **Tribal transformation through Global Governance: Understanding Tensions and Possibilities**

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## **Abstract**

Tribal transition in the form of building an inclusive, sustainable and resilient future with the tribal people does not suffix to policy initiatives solely based on state-national prerogatives and entitlements. Even in the case of tribal community in India, the pace and intricacy of their transition has implication upon how global trends turn out and is simultaneously influenced by how global governance legislate on these issues. Despite their cultural differences, indigenous peoples from around the world share common problems related to the protection of their rights as distinct peoples.

Though global governance is a contested term that bring issues between sovereign nations, UN bodies and international non-governmental organizations into core, how tribal issues and challenges in India can benefit from global legislation goes beyond these tensions. India's global role in tribal law is at least plausible, but not always encouraging from the viewpoints of Sustainable Development Goals that signals higher decentralization in tribal governance. India has voted in favour of the 2007 United Nations Declaration on the Rights of Indigenous People (UNDRIP) that recognizes their right to self-determination and right against forcible eviction and relocation without informed consent. However, India is not party to International Labour Organization (ILO) Convention on Tribal Peoples in 1989 that serves as a framework for empowering their "right to define their own priorities for development". It is tempting to note that this convention incorporates gender equality as a cross-cutting concern for tribal empowerment and transformation. A distinct element of global governance in tribal transformation is their consideration and incorporation of poverty reduction, climate change action, gender equality and sustainable development as complimentary issues interwoven with the tribal problem.

This paper attempt to place tribal scenario in India in a larger canvas of global tribal population and analyses their transformation through the prism of global governance. Tensions between global and national narratives and its implication for tribal people in India occupy significant portion of this paper.

## **Introduction**

Two centuries ago, tribals lived in the vast majority of the world's environments. As indicated by the International Fund for Agricultural Development, native individuals today have the lawful right to utilize just around 6% of the planet's property and much of the time their freedoms are incomplete or qualified. Native people groups live in each locale of the world, yet around 70% of them live in Asia (IFAD). Regardless of tremendous variety among Indigenous gatherings all throughout the planet, Indigenous populations share similar experiences and struggles. Settler states and governments typically represent settler society, which is often more populous and powerful than the Indigenous inhabitants of the country. In this situation, Indigenous populations have become socio-economically disadvantaged and

vulnerable to discriminatory state policy and even to outright armed repression. An important impetus for much of colonial and national policy was an attempt to assimilate indigenous peoples and adapt them to dominant society through both the military and more soft pressures. Some assimilation policies, such as the arrest of children, have similar forms around the world. In Canada, during the 1960s scoop, indigenous children were taken out of their homes and given to non-indigenous families. In Australia, the subjects of similar policies are known as the stolen generation. In many countries, governments have implemented indoctrination programs under the guise of education (for example, the boarding school system in Canada and the industrial schools in the United States).

In India, tribal alienation can be traced back to the British Raj, where the state had free control of land and forest resources. However, in independent India, it continued as mass acquisition of tribal land in the name of "development project". The difficulties that Tribals faced have failed to become part of the public discourse. Tribal transition in the form of building an inclusive, sustainable and resilient future with the tribal people does not suffix to policy initiatives solely based on state-national prerogatives and entitlements. Even in the case of tribal community in India, the pace and intricacy of their transition has implication upon how global trends turn out and is simultaneously influenced by how global governance legislate on these issues.

Though global governance is a contested term that bring issues between sovereign nations, UN bodies and international non-governmental organizations into core, how tribal issues and challenges in India can benefit from global legislation goes beyond these tensions. A distinct element of global governance in tribal transformation is their consideration and incorporation of poverty reduction, climate change action, gender equality and sustainable development as complimentary issues interwoven with the tribal problem. The first session will take note of various international instruments and global governance regimes that benefit and bring together the cause of Indigenous Peoples. The session will specifically deal with how indigenous cause in India and Indian governments stand chafe against, negotiate and cohabitate global tribal scenario.

### **Indigenous Peoples at Global Platforms**

International law does not have a peculiar definition of indigenous peoples. However, some factors are widely accepted as important factors, such as indigenous or self-identification as an indigenous people, various social, economic and political systems personal language and culture, strong ties to territory and natural resources. The term 'indigenous people' was adopted by Aboriginal leaders in the 1970s after the emergence of indigenous rights movements around the world to identify and unite communities and represent them in political arena such as the United Nations. Indigenous was picked over different terms that pioneers felt reflected specific narratives and power

elements, or had been forced by the colonizers. Given the variety of Indigenous experience, no all-around acknowledged definition has been drafted.

The principal time for Aboriginal international organizations was in the 1970s. In 1973, the first Arctic People's Conference was held in Copenhagen, recognizing and addressing the general problems and rights of the people of the Arctic Circle. Representatives of Canada, the founding organization of Greenland (members of Inuit Tapiriit Kanatami and the National Indian Brotherhood) and Scandinavian Sámi attended the conference. Since then, cross-border indigenous organizations have been established around the world. The Indigenous Peoples of Africa Coordinating Committee is a comprehensive organization that represents indigenous peoples throughout the African continent.

The Asian Indigenous Women's Network brings together indigenous women from the Asian continent, and the Asia Pacific Indigenous Youth Network also organizes indigenous youth in Asia. In 1982, the United Nations Working Group on Indigenous Peoples was established by indigenous organizations and UN member states. UNWGIP was made up of five independent experts and was advised by indigenous volunteers. One of UNWGIP's goals is to raise international standards for indigenous peoples' rights, and in 1994 the group drafted the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989 (No. 169), and ILO Convention on the Rights of Indigenous, Tribal and Semi-Tribal Populations in Independent Countries, 1957 (No. 107) are international documents that specifically deals with the rights of indigenous peoples. In addition, indigenous peoples' rights are protected by other international human rights documents, including the International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the International Convention on the Rights of Persons with Disabilities (CRPD); and the Convention on the Rights of the Child (CRC). Over time, Indigenous members of the UNWGIP felt unrepresented in the United Nations and unable to adequately address the concerns that most affected Indigenous people. In 2000, a new body was established—the U.N. Permanent Forum on Indigenous Issues (UNPFII)—with a structure designed to allow for effective Indigenous participation. The UNPFII is an advisory body that submits recommendations and reports to the U.N. Economic and Social Council. These international instruments protect the rights to self-determination; indigenous lands, territories, and resources that have been traditionally owned, occupied, or used by indigenous communities; health; education; employment; housing; and equality and non-discrimination, among others.

The UN Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples, and the Special Rapporteur on the rights of indigenous peoples are transnational bodies that overlook compliance with transnational legal norms as they relate to indigenous peoples, produce recommendations on indigenous peoples' rights, or give advice on indigenous issues. There has been a vigorous and dynamic interface between indigenous peoples – numbering further than 370 million in some 90 countries – and the United Nations, an interface which, delicate as it is, has produced at least three results a) a new mindfulness of indigenous peoples' interests and human rights; b) recognition of indigenous peoples' priceless contribution to humanity's artistic diversity and heritage, not least through their traditional knowledge; and c) a mindfulness of the need to address the issues of indigenous peoples through programs, legislation and budgets. Along with the movements for decolonization and natural rights, as well as the women's and environmental movements, the indigenous movement has been one of the most active civil society interlocutors of the United Nations since 1945. Indigenous and tribal peoples themselves, through efficient engagement in transnational fora, have come up as active parties in global policy debates on human rights, development and climate change, claiming their rights and drawing the world's attention to their interests and privileges. Indigenous women partake diligently in civil, local and global policy debates, including through the International Indigenous Women's Forum. Even so, ILO Convention covering Indigenous and Tribal Peoples in Independent Countries, 1989 (No. 169) is the single most important and influential international instrument that has bearing upon tribal and indigenous transformation in the world. This however doesn't mean that the convention is widely acknowledged, rather it's one of the least acknowledged ones. In contrast to the scant ratification of the convention, the UNDRIP, another UN instrument was adopted with nearly universal support by the General Assembly in 2007 because unlike C169, it isn't a binding instrument. This salient difference might help clarify why countries that voted in support of the UNDRIP haven't ratified C169. Approval of the UNDRIP doesn't obligate countries to take up and apply the norms it contains; ratifying C169 does. The ILO should consider enlisting the ACHPR, as well as indigenous rights and civil society associations, to encourage fresh ratification of C169 in a manner akin to the strategy embraced to overcome regional opposition to the UNDRIP before its acceptance.

### **ILO and the global legal framework for Indigenous rights**

The International Labour Organization, began in 1919, is the only specialized agency of the United Nations. Its purpose is to "set labour norms, develop guidelines and develop programs to advance decent work for all women and men". The ILO is a tripartite body consisting of representatives chose by the authorities, employers and workers of each constituent country. Workers'

representatives are generally the National Trade Union Federation, which allows indigenous peoples to partake in the ILO.

In the 1980s, the ILO began to revise and replace the existing convention on the rights of indigenous and tribal peoples, C107, which was adopted in 1957. Drafting Committee honored the rise of the global indigenous movement in the 1970s when the basic assumptions of C107 were challenged. In fact, the rise and impact of FPIC (free, prior and informed consent) in regulations and debates over indigenous rights is so severe that it isn't just a legal figure, but a tribal right and multiculturalism, with its own language and rules. Thus, the consultation approach has emerged as the most probable candidate for supplanting the integrationist approach, which prevailed in transnational law and domestic legal frameworks throughout the twentieth century and aimed to conclude the "indigenous problem" by assimilating aboriginal peoples into the rest of society. Therefore, activists on the 20th have sought a framework that respects and protects indigenous peoples and indigenous traditional cultures and recognizes their right to self-determination. With this in mind, the ILO amends C107 to reflect a shift in this concept that requires a redefinition of the legal principles adopted to address the vulnerabilities of indigenous communities around the world. Therefore, Convention 169 arose from the ILO's decision to revise the symbolic legal framework of assimilation, "to shift the Convention's emphasis from the objectives of integration to that of respect for identity of [indigenous] populations and to promote increased consultation with, and participation by, these peoples in the decisions affecting them". This reinterpreted indigenous peoples as communities worthy of special protection from the majority of the population and provided a new way to understand the concerns of those communities. This emphasis reflects the expansion of the neoliberal "governance paradigm" that explains the spread of terms such as "participation," "empowerment," and "consulting" of "stakeholders" in all types of regulation. This is a controversial process in that the global movement for indigenous peoples' rights has challenged the governance paradigm for the past three decades. By advocating the principles of indigenous self-determination, the movement has influenced international and national rules on collective rights. Against this background, the ILO began working on the C169 in 1986.

Since 1989, only 23 countries have ratified the ILO treaty, and ILO 169 continues to hold those governments accountable for violations. ILO's engineering of ratified states takes various forms, frequently in conflict with independent governments. In numerous countries, automatically, ratified transnational treaties apply at the national level. Thus, courts may count on international labour norms such as the ILO or definitions of standards like as "forced labour" and "discrimination" to rule when domestic law is insufficient or silent. In addition to legislation, international principles similar as these can give guidelines for the development of public and regional programs such as employment, labour and family policy. A prominent illustration is the case of

Guatemala, which ratified it in 1996. And in 2014, the Guatemalan Court of Appeals ruled that "the government must admire the right to draw informed and free consent when conceding a mining license to indigenous land". This judgment was issued after the Sipakapense People's Council came forward and stated that the Ministry of Energy and Mines did not consider the results of a 2005 community consultation before giving a Canadian mining company a mining license. ILO Convention 169 gives the community the opportunity to hold the government accountable for the agreed agreement and the support of international labour agencies. In contrast to the sparse ratification of C169, UNDRIP was passed by the General Assembly in 2007 with almost universal support because it is not a binding tool. This striking difference can explain why the countries that voted for UNDRIP did not ratify C169. UNDRIP approval does not require states to adopt and apply the standards contained therein. Ratification of C169 require so. Therefore, Asian and African countries that oppose the application of the term "indigenous" in their territory are likely to avoid ratifying a legally binding document that allow indigenous peoples or groups that identify themselves as indigenous to access the special protections enshrined in the Convention. The ILO should consider using ACHPR and indigenous rights and civil society organizations to encourage further ratification of the C169, as well as the strategies adopted to overcome regional opposition to UNDRIP prior to adoption.

### **India and ILO Ratification**

The ILO activities has impacted India, and India has influenced the ILO. The tripartite Committee on the ILO Convention oversees aspects of international labour standards, proposals for new conventions/ ratification of old conventions, and compliance with the provisions of ratified treaties. The commission has been inactive for several years, but is now picking up. Like most other states, in India, legal structures such as wages, working conditions, social security, social security, protection of endangered populations, human resource development, equality and indiscrimination are heavily influenced by the ILO Convention. I am. And recommendations.

India has signed ILO Convention No. 169 on the Rights of Indigenous Peoples, but India has not ratified it. The Government of India has always taken the position that all Indians, including tribes, are indigenous and our tribes alone cannot be likened with indigenous peoples. This goes against the first article of the convention. The definition of the convention is claimed to be understood in situations where indigenous peoples are significantly different from colonial settlers, similar as Australia, New Zealand and the Americas. This is also a bigger problem associated with ambiguous nature who constitutes indigenous and tribal people at global platforms. Indigenous peoples of Asia understand their status as a result of " various lifestyles, societies, customs, community-acquainted social and political institutions" related to their history and habitat. Thus, indigenous peoples' perceptions vary within the region. For example, national law in Nepal, the Philippines and Cambodia is closely aligned



with the internationally recognized description of indigenous peoples as it takes into account cultural integrity and distinctiveness, common identity and special connections with the land. India, Bangladesh, Indonesia and Malaysia are somehow sensible of their tribal people, but the same does not seem to be the case, as they may be inconsistent or partly compliant with international ILO principles. "Scheduled tribes" are usually informally identified in India based on factors such as "primitive traits" and "backwardness."

Indian authorities have accordingly held note of the matter that the ratification of Convention 169 would right away open the doors to offers of partnership from other State parties to the Convention, despite any assertion/reservation Government of India might make on clarification of who compose "indigenous people". Another assertion is that Article 7 of C-169 stipulates that indigenous and tribal people should have the right to choose their own priorities for the purpose of development and partake in any developmental operations that may affect them directly. It's felt that this Article would produce administrative tensions and pervert the planning process in the country.

Article 32 of the Convention envisages that the Government should take fitting means for advancing and facilitating connections and association between the indigenous and tribal peoples across the border in economic, social, cultural, religious and environmental platforms. It has been suggested that it may raise the degree of social and demographic problems by bringing special rights and impunity demands among various groups of tribes and indigenous peoples. Given the current security atmosphere and the ongoing inflow of cross-border illegal immigrants, the execution of this article will produce greater social tensions. Another aspect of the problem is that if the Government of India ratifies the ILO Convention, it'll be subject to the ILO's oversight mechanism for the fulfilment of the various provisions of that Convention. Given the nature of the ILO's tripartism and the varied stakeholders within the Secretariat and civil society who are presently uniformly involved in the process, this process may have strong political implications. These along with many other administrative and political hurdles are often cited for India's non-ratification.

Whatever they have been, there has evidently been no concern/effort to harmonize our domestic safeguards with international best practices embedded in the Convention. While some of the best practices have been embedded through existing safeguards in our Constitution, in respect of remaining, a view needs to be taken for Constitutional/legislative changes which may be appropriate for modern times/context. While we may accept the non-applicability of the concept of indigenous people (defined in C-169) in the Indian context, as highlighted by Ministry of External Affairs, Ministry of Tribal Affairs, Ministry of Labour & Employment, and also heed to political overtones, indigenous citizen concerns and the reporting load arising out of ratification of C-169, and not subscribing to the Convention too on such

considerations, it is certainly desirable to consider the best practices emerged from the Convention for their adaption in relation to the tribals.

### **Global right-based approach as a corrective mechanism in India**

Lately, UN agencies in India have made the advancement of civil, cultural and political rights through a right- grounded approach an inherent part of development assistance. Beyond economic development, the United Nations in India and aside has used a rights- based approach, especially to promote human rights. Indiscrimination is a central part of rights- based progress and pervades all UN activities in India. Numerous marginalised groups are the subject of UN programming. Most notable are the "Scheduled castes" (caste people historically marginalized in Indian life and particularly supported by the government) and the "Scheduled tribes" (alienated indigenous groups).) This is a significant and unsung advance in the fulfilment of human rights, deliberately and quietly conducted "under radar" by UN agencies. Countries like India frequently oppose external efforts to promote the rights of indigenous peoples because efforts like these could often constitute an incursion of domestic political issues. Using development aid helps get around the issue of national sovereignty by enlisting governments in collaborative projects aimed at less contentious targets of economic development, with rights as a by-product. Perhaps most importantly, these developments imply that the conventional Geneva-and New York- grounded mechanisms of human rights advancement and enforcement, grounded on programs of "naming and shaming" are being supplemented by new, more collaborative approaches. This promises a better and more effective regime for tribal rights.

India's Universal Periodic Review (UPR) has been produced at various meetings of the United Nations Human Rights Council. These gatherings contain recommendations from common interest groups on the rights of indigenous peoples in India. Domestic NGOs and human rights groups like as Adivasi Women s Network (AWN), Naga Peoples Movement for Human Rights (NPMHR), Chhattisgarh Tribal Peoples Forum (CTPF) and Asia Indigenous Peoples Pact (AIPP) participated in these reports. Thus, this review serves as a common platform for civic and transnational associations to advise on tribal issues in India and together find solutions. recent reviews are proud to buy numerous referrals and receive positive and confirming statements from government officials. The recommendations call on the government to develop and apply precisely targeted strategies and plans for ST's socio-economic development, while the National Commission on Scheduled Tribes oversees functioning at the national and state ranks and generate tribe-specific health indicators and compound development indexes. These plans and guidelines should be developed in line with the implementation of India's Sustainable Development Goals.

These reviews have urged India to consistently and effectively implement the 5th and 6th schedules of the Constitution and PESA Act. This includes

expanding the model of the Autonomous Councils and local governments and considering expanding the power of the Tribal Councils by including protective and developmental mechanisms. An important recommendation was to recognize ILO Convention No. 107, the right of tribal communities to say "no" to land acquisition, and to access and manage forests and other resources, in accordance with their rights to access and manage forests and other resources in line with ILO Convention No. 107, the right to Free, Prior and Informed Consent as provided in UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and India's own national legislations such as Forest Rights Act (FRA), as per the CERD recommendation. These reviews have always referred to various other international legal systems in order to provide a framework for national law. For example, they monitor the availability and efficiency of legal service authorities, cover legal education programs, raise awareness of all legal remedies available for women and girls of the proposed tribes. There are also many obvious rejections of Indian government's actions. They often call for repealing FCRA, which is increasingly being used to impede civil society access to foreign finances and fails to conform to international human rights norms and standards, as also noted by the UN Special Rapporteur. They also called for the removal of obstacles and loopholes in the implementation of forest rights legislation in order to make the legislation more effective for indigenous communities to properly recognize their claims to forest rights. An important recommendation in recent years has been the revision of the CAMPA Act compared to the Forest Act to ensure the approval of tribes and forest dwelling communities to implement the CAMPA. Others include meaningful consultations with tribal communities, to develop national action plans to implement UN Guiding Principles on Business and Human Rights, and to provide effective relief to communities affected by business activities. Repealing Armed Forces Special Powers Act (AFSPA), 1958, conducting free and fair investigation into the abuses of the Indian forces and holding them accountable for the atrocities are other measures widely pointed out.

The review also points out India's positive measure on tribal issues. The sessions commended the Government of India's High-Level Committee, led by Virginius Xaxa. This Commission suggested policy initiatives and effective results- grounded measures to upgrade development indicators and enhance ST's public services. The report also constantly praises India for enforcing the recommendations mentioned. For instance, the Parliament of India passed Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Bill in 2015 regarding the effective implementation of Scheduled Castes and Scheduled Tribal Acts, prevention and justice for violence against indigenous peoples and delivering strict punishments for those involved in atrocities against ST. The bill modifies certain existing classifications and enlisted further crimes, including, but not limited to, illegal occupation of land held by ST, assault or sexual exploitation of ST women, and other provisions regarding functions of public servants and courts

Still, it should be remembered that careful use of the media is an integral part the impact these recommendations have on the Government of India. UN officers agree that the media is an important sympathizer in promoting human rights standards. However, regarding violations of the law, the UN officers doesn't immediately sensationalize the issue in the media in the first place. As UNICEF officials pointed out in areas where the government is fighting the Marxist rebellion, the government's "belief and trust" in UN agencies and reports is usually impaired if the issues are aired before the media before discussing with the government. Good ties with government bodies are essential and double-crossing them by going to the media instead is disastrous. even so, once the government is notified (often using government data to clear this), the media can be exploited to hold the government's feet to the fire.

Even recent reports by non-UN agencies were tailored to work as a recommendation for the government rather than a sensational news for Media. As the sale of 41 coal blocks by the Government of India is underway, Danish-based International Work Group for Indigenous Affairs and New Delhi based National Campaign Against Torture and Indigenous Lawyers Association of India in their report "Bearing the Brunt Impact of Government Response to COVID19 on Indian Indigenous People asked the Government of India to cancel the coal block sale as part of India's Aatma Nirbhar Bharat Abhiyan (Independent India Mission). The document called for the pullout of the 2020 Environmental Impact Assessment Notification and investment of resources allocated for the Etalin hydropower project in Divan Valley, Arunachal Pradesh for green energy rather than building a dam. Regarding not including coal in the COVID19 recovery plan, canceling the coal extraction commissioned for sale, and developing a specific COVID19 recovery plan for the indigenous people of the country, the report similarly asked to execute the Secretary-General's recommendations.

In addition, the UN Special Rapporteur on a variety of issues such as housing, labor, the environment and climate, and the Special Rapporteur on Indigenous Peoples, have constantly raised problems facing indigenous peoples in India. The Special Rapporteur on Indigenous Rights strongly recommended that the human rights of Adivasi be embraced as a top priority for the pursuing the Narmada Dam Development Project and other projects of this class. Without the complete and informed consent of the indigenous peoples involved, true human rights-centric development as recommended by the General Assembly is seldom possible. An immediate step recommended is to stop further rises in reservoir water levels until the unresolved issues of rehabilitation and resettlement are resolved through productive dialogue and negotiations between the parties to the satisfaction of the Adivasis. They suggest that by ratifying ILO Convention No. 169 and taking up the UN Declaration on the Rights of Indigenous Peoples, India can demonstrate its commitment to the human rights of Adivasi people. Other ways to integrate Adivasis into the

project were also discussed. Adivasis are thus considered project partners and their investment is taken to be their natural resource. As a result of this continued lobbying by tribes and human rights groups, the Government of India now recognizes the need to address issues raised by affected communities.

Corrective mechanisms are not always put in place in a direct and autocratic manner. Often these take difficult pathways and special considerations for UN agencies to work as successful and efficient corrective mechanism for the domestic government. The implications of this work are plainly reflected in the challenges that UN personnel face. One recounting anecdote came from a UNICEF communication specialist, speaking about efforts to rally communities in support of education. The staffer related of going through policy documents and replacing the word "mobilization" with "participation" since mobilization inferred having people question their government rather than just work alongside it. While clearly reflecting that the Indian government does have a commitment to decentralization and citizen participation that's both legal and practical, the staff member also noted that it's a delicate process when one is "trying to alter the mindsets and power structures". Specifically, there's this significance of using government data. Ground activists mostly don't go with UN-collected data because government counterparts will simply say that their information is prejudiced. Most activists use government data in ways that their interlocutors cannot ignore or reject. Many also referred to the Human Development Report as a workable instrument; in particular, India is currently publishing a state human development report that can be used to compare state progress. Telling civil servants that they are lagging behind other states is a very powerful tool for encouraging action. Working on-ground with tribal people require many more other strategies from UN agencies. Promoting rights issues without actually using the term rights is one of them because the term doesn't not always sound comfortable for people on ground; instead, policies are presented using less sensitive language. UNFPA staff, for example, explained that while they speak of rights when talking with their national government counter parts, they avoid the term when interacting at lower levels of government and at the grassroots. This is important because, effective working of UN agencies in tribal matters depend on how deep to the grassroots could the activists go.

Another platform for UN agencies is to work as an umbrella organization for various domestic stakeholders in the tribal issue- "convening power" of UN agencies. The greatest power of the United Nations in India depends on its ability to bring together political parties, especially elected civil servants, civil servants, civil society support groups, local members of Panchayati and other grassroots organizations. The United Nations has considerable goodwill and is honored as an "honest broker" who can use this status in chasing goals such as community empowerment. Their activities can also be highly sensitive, as multiple stakeholders have different views on the tensions. For this to be

successful, United Nations personnel need to be truly familiar with regional issues. They need to be extremely careful to put together a balanced combination of functions for both the ruling and opposition parties. In these cases, it was important not to praise or work closely with the government during the elections for fear of supporting one party more than others.

### **Tribal question and bringing together SDG goals**

Indigenous peoples in India play essential role in guarding natural habitats such as biodiversity, forests and lands. They live in geographic areas and ecosystems that are most exposed to climate change. These include moist tropical woodlands, alpine, small islets, coastal areas, dry and semi-arid areas. The 2018 IPCC report found that traditional indigenous identities are closely interwoven with natural world. Indigenous economies depend primarily on natural resources and ecosystems with which they share complex cultural connections owing to their ways of forest management and agroecosystems, and the traditions that have been handed down from generation to generation. Since natural capital is their most substantial means of production, they could act as pioneers in enforcing modern economic models grounded on the principles of a sustainable green economy. Indigenous peoples' traditional knowledge and cultural approaches are unique and hugely relevant and valuable for climate change. For instance, "Climate Smart Agriculture" (CSA) consists of a combination of traditional and contemporary tactics. It's one of the most cited and promoted approaches for mitigating and conditioning with climate change. Their traditional knowledge also helps with crop and livelihood diversification, the use of new materials, seasonal climate prediction, and community-grounded disaster risk management. Australia's Aborigines, for example, are reported to have had significant knowledge of the most extensive wildfire prevention these days. They employ a mosaic-like cool fire technology that ignites when a small patch of low-intensity fire cools. Given their substantial contribution to climate control and environmental conservation, the Indian government is prompted to look into areas of contention and offer them comfort and required support. Access to decent work can further enable indigenous peoples to harness their capability as change agents in poverty reduction, sustainable development, and climate change action. Most of the global governance measures in the field of tribal empowerment, including the SDG goals takes in to account climate change and conservation of natural habitat as medium of transformation. Bringing together India's Panchasheel goals with those targets will bring further progress to tribal problem.

A particular aspect of discrimination against indigenous and tribal people is the narrow coverage of official statistical data. This lack of data also means that the impact of ongoing changes affecting indigenous and tribal communities cannot be duly measured and understood. The 2030 Agenda also emphasizes the need to integrate the obtainability of disintegrated socio-economic data. It has been blamed that the SDGs didn't comprehensively consider the challenges of indigenous peoples, as only two of the 169 SDG goals

were notably reserved for indigenous peoples. Nonetheless, in compliance with the goals of the SDGs, there's global interest among governments, non-governmental organizations in indigenous groups. For example, focusing on investment in women's health, education and empowerment adequately reflects the evidence base that shows benefits for the survival of children and the general well-being of their communities. A systematic analysis shows that the expansion of female education in sub-Saharan Africa means that child mortality has not increased during HIV epidemic. From this conclusion, improving the health and well-being of indigenous women and concentrating on empowering them is key to "closing the gap" and improving the survival of the indigenous community as a whole. In recent times, the 2030 Agenda for Sustainable Development has evolved into a platform for indigenous peoples to participate in the follow-up to the 2030 Agenda for Sustainable Development espoused by UN member countries in 2015.

The 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs) render a momentous and unique opportunity to ensure that indigenous and tribal people aren't left behind. The 2030 Agenda recognizes that development programs to eradicate poverty must counter inequality along gender and racial boundaries by simultaneously pursuing economic growth and regard for rights. In order to take advantage of this occasion, it's imperative to pay particular attention to the situation, participation and contributions of indigenous and tribal peoples and incorporate them into the SDGs achievement strategy. The coming decade of 2030 will be decisive for a sustained reversal of existing patterns of disadvantage and exclusion.

## **Conclusion**

Scholars frequently argue in legal discussion that "the state is retreating". Traditional territorial divisions among state, local, and international levels do not reflect the dynamic interaction among actors at all levels when referring to global tribal movements and policies in the India which is more or less dominated by Indian governments standard tribal mechanisms. In seeking answers to the tribal problems, community-level stakeholders organize local concerns, standards and ideas, yet work in tandem with global partners for goals at both levels. The ability of actors to act in these global governance networks is based on their normative foundations and ideas. Contrary to network theories that create unidimensional views of the formations of global governance networks, I contend that interactions between global governance and tribal cause and law in India are not without conflict and negotiation. Open discussion, criticism, and contested negotiation are standard mechanisms of the policies that these transnational interactions between UN agencies, activists, Indian society and domestic laws ultimately produce. Transnational norms, espoused by indigenous communities and used by indigenous opposition groups, are pressing the Government of India to change its policies towards indigenous peoples.

Our analysis of global governance on indigenous issues have found that there has been a shift to right-based approach by UN agencies working under the shade of sovereign countries, which has its own variant in India. This is clearly an important and uncelebrated advance in the implementation of human rights, a consciously done and quietly "under the radar" activity by UN agencies. Further, consultation approach has replaced the integrationist approach on tribal issues, which prevailed in international law throughout the twentieth century and purported to resolve the "indigenous problem" by assimilating aboriginal peoples into the rest of society. Global governance now calls for a framework that respected and protected the traditional cultures of indigenous and tribal peoples and recognized their right to self-determination.

It is found that an opportunity for sovereign countries like India to work in tandem with global indigenous governance is to work towards SDG goals as a meta-framework for revising existing patterns of disadvantage and exclusion for tribal India. A comprehensive review of global corrective mechanisms in Indian tribal scenario shows that traditional mechanisms for promoting and implementing human rights in Geneva and New York under the "naming and shaming" policy are replaced by new a new method based on seeking cooperation and complemented by a more collaborative efforts between global and domestic agents. This promises a better and more effective regime for tribal rights. Involvement of more activist and tribal elements in this process will have results that Khagram Ali found with regard to global governance networks i.e., a shift away from government-centric interstate regimes dominating human rights field, especially those of tribal people.

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# **A CRITICAL ANALYSIS OF THE SUPREME COURT CASES IN INDIA ON DEATH PENALTY**

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**ABSTRACT-**

***Capital Punishment is as fundamentally wrong as a cure for crime As charity is wrong as a cure for poverty.***

***-Henry Ford***

We live in a society where we hear about the crimes unceasingly. Where 'punishment' becomes the only tool to deter the crime. But not every crime and criminal can be punished with capital punishments. Crimes which are served with the punishment of death penalty are referred to as capital punishments. Our laws believe in the process of reformation or retribution. In earlier time the King believed in extreme tyranny, for even a mild crime the punishment was of severe nature. Death penalty was also a common punishment during 1890's. Section 368 of The Criminal Procedure Code of India grants the High Courts the authority to confirm a death sentence.

The Code of Criminal Procedure 1898 embodied in section 367 (5) that-

*"If the accused is convicted of an offence punishable with death and the Court sentences him to any punishment other than death, the court shall in its judgement state the reason why sentence of death was not passed."*

**INTRODUCTION-**

Death penalty means taking away the life of a person by judicial pronouncement in accordance with the procedure established by law.<sup>84</sup> After the amendment of code of criminal procedure in 1955, this provision mentioned above was deleted. Later this code codified that no death sentence will be awarded to the convict who are minor i.e., below the age of 18 years or if the convict is pregnant at the time of giving death sentence. According to the Indian Penal Code of 1860, the death penalty is imposed for a number of crimes. Criminal conspiracy (Section 120B), murder (Section 302), waging or trying to wage war against the Government of India (Section 121), abetment of a mutiny (Section 132), dacoity with murder (Section 396), and other offences are punishable by death<sup>3</sup>.

**VALIDITY OF DEATH SENTENCE-**

The question of abolition of death sentence was raised by Shri Gaya Prasad Singh who introduced the bill regarding this. Later after independence in the year 1956 Shri Mukand Lal Agarwal a congress member introduced a first bill to abolish death penalty. This penalty is given for rarest of rare cases. This validity was first raised in the case of Jagmohan Singh's case<sup>85</sup> in the Apex court. The accused was convicted under Section 302<sup>86</sup> for the murder of

<sup>84</sup> Pawan Jain, Supreme Court on Death Penalty 1-2 (First Edition 2016). <sup>3</sup> Indian Penal Code 1860, No.- 45, Acts of Parliament 1860.

<sup>85</sup> Jagmohan Singh vs. State of Uttar Pradesh AIR 1973 SC 947.

<sup>86</sup> Indian Penal Code 1860, No.- 45, Acts of Parliament 1860.

Chotey Singh. Many arguments were brought up questioning the validity of Article 14, 19 and 21 of Indian Constitution<sup>87</sup>. In this case the Supreme Court held that Right to life is not violated while giving the death sentence as long as the penalty or punishment given is in accordance to laws and public policy. It was also observed that the court is declaring the punishment with regard to foreseeing the facts and circumstances so there comes no question of challenging the argument on the basis of Article 14. This case was decided prior to insertion of Section 354(3)<sup>88</sup>. Though the constitutional validity of the death sentence was upheld in the said case, yet the circumstances wherein it should have been awarded was not discussed and elaborated. Later it was seen that it was all in hands of court to either award death penalty or life imprisonment for the offence of murder.

Later in 1978 many cases popped up and Apex court was questioned as to in which case capital punishment has to be pronounced on the accused and why not in other cases. The main thing that arose was that Section 302 of IPC 1860 permits death penalty. Whereas section 354(3) of Criminal Procedure Code 1973 provides discretionary powers. Coming over to the judgements given by the apex court it was seen that '*Special reasons*' must vindicate the sentence and so must be related to why the murderer must be hanged and why life imprisonment will not suffice. The Court also held that reasons must relate not to the crime as such but to the criminal.

Another case came up where a five-Judge Bench of the Supreme Court struck down Section 303 of the Indian Penal Code, 1860 holding that the provision violated Articles 14 and 21 of the Constitution. As per Section 303, if a person undergoing life imprisonment committed murder, they would mandatorily be sentenced to death. The Supreme Court held that the provision drew an arbitrary distinction between persons committing murder and persons undergoing life imprisonment who committed murder.<sup>8</sup> Here it is important to note that sentence of death shall not be pronounced against the person who is under 18 years of age when he committed a crime. Secondly, the sentence of death shall not be passed on pregnant women, as we have witnessed this in Rajiv Gandhi's assassination.

### **JUSTICE MORE COMPLETE-**

In a judgement delivered by the Supreme Court, in *Manoj & Ors vs. State of MP*<sup>89</sup>, embarked on a significant attempt to reform the administration of death penalty. Though the constitutional validity of the punishment was not an issue in this case, the judgement by Justices UU Lalit, Ravindra Bhat and Bela Trivedi will occupy a prominent place in India's criminal justice jurisprudence for its reflections on the state of the death penalty in the country and its attempt to fix a broken sentencing system. However, achieving meaningful

<sup>87</sup> Right to Equality, Right to Freedom and Expression and Right to Life.

<sup>88</sup> Code of Criminal Procedure, 1973, No.- 2, Act of Parliament 1974. <sup>8</sup> *Mithu vs. State of Punjab* AIR 1983

<sup>89</sup> Criminal Appeal no. 248-250/2015.

compliance across all levels of the judiciary will be significant challenge and so will translating these procedural reforms into substantive fairness in determining punishment. There has been a long judicial crisis in death penalty sentencing on account of unprincipled sentencing, arbitrariness and worrying levels of subjectivity. The crisis has been acknowledged by the Supreme Court, the Law Commission of India, research scholars and civil society groups. At the heart of this concern is the fact that death penalty sentencing has been by and large crime centric. This approach has flown in the face of the requirements imposed on sentencing judges by the Supreme Court in *Bachan Singh* (1980). In essence, the ruling of the five-judge bench in this case laid down a framework to be followed by judges who have to choose between life imprisonment and death sentence. This framework made it binding for the sentencing judges to take into account factors relating to both the crime and the accused and assign them appropriate weight. Judges couldn't decide to impose the death penalty only on the basis of the crime. The background of the accused, the personal circumstances, mental health and age were considered while sentencing an accused. Judges were required to weigh mitigating and aggravating factors to ascertain if a case was fit for the death sentence and also determine if the option of life imprisonment was 'unquestionably foreclosed'. The four decades since *Bachan Singh* have shown us that this framework has been followed more in breach. The truth of the matter is that there is utter confusion across the level of judiciary on the requirement of this framework and its implementations. An important reason for this breakdown is that factors relating to the crime— the nature of crime and its brutality— are of ten dominant considerations, and there is barely any consideration of mitigating factors. There has been very little discussion on bringing the socioeconomic profile of death row prisoners as a mitigating factor into the court room. There is now empirical evidence that a vast majority of India's death row prisoners are extremely poor and often do not receive competent legal representation. In last four decades, we have tried to implement the *Bachan Singh* framework without really addressing the measures that need to be put in place to gather the information required to give the effect to the verdict.

The significance of recent judgement, authored by Justice Ravindra Bhat, is that it takes this problem head-on. It identifies the lacuna as an explicit concern, the stage and consequences that flow from such a vital gap, and suggest measures to plug it. The judgement is clear that certain procedural thresholds must be met for sentencing to be fair and explicitly rejects the idea that death sentences can be determined solely on crime-based consideration. A striking part of judgement is its commitment to recognising reformation as an integral to the Indian Criminal Justice system, especially death penalty sentencing. It asks the state and sentencing judges to establish that there is no probability of reformation of the accused. The verdict recognises that the aspects of the accused's life, both pre offence and post offence imprisonment, are relevant. As practical steps in this process, the judgement asks courts to call for reports from the probation officer as well as prison and independent

mental health experts. The state too must present material that speaks to a wide range of factors. The right of the accused to present mitigating factors and reboot the state, if necessary, is also recognised.

Along with the *Suo moto* writ petition on the collection of sentencing information in death sentence cases that the bench headed by Justice Lalit is currently ceased off, there is now a concerted effort to plug procedural gaps in death penalty sentencing. It is obvious that the manner in which death penalty sentencing is being carried out across different level of judiciary is constitutionally unsustainable. These glaring sentencing errors have also been pointed out in series of death sentence judgements from the benches headed by Justice L Nageswara Rao in the Supreme Court. The attempts to bring out procedural coherence and integrity will face significant challenges in the trial courts and the High Courts and it is far from certain that these reforms will be meaningfully implemented in those forums. Apart from this issue of implementation, even if detailed and high-quality sentencing information is to come in our courtrooms, a bigger challenge awaits. The judicial treatment of sentencing information is a Pandora's box that will inevitably have to be opened. The Supreme Court will have to provide a rigorous normative basis for consideration of these factors. In the absence of such foundations, death penalty sentencing will continue to be unprincipled and sentencing judges are not going to understand the need for this wide range of sentencing information. And that might will be a question that public at large might ask, why should we care about all these sentencing factors concerning the accused? The answer to that lies in crucial discussions on moral culpability for our actions in psychology and philosophy. There is now overwhelming evidence from psychology that criminality cannot just be reduced to terrible decisions by individuals in exercise of their free will. All our actions are a result of a complex web of biological, psychological, and the social factors and that understanding has a very significant bearing on discussions on criminality and punishment.<sup>90</sup>

### **LANDMARK JUDGEMENTS-**

Death penalty cannot be awarded for a small offence because laws cannot come in conflict with the human rights which every human has a right to access. But sometimes the cases that come to the court of law are too heinous that they make the citizens rebellious enough that if proper punishment is not awarded people will lose faith in justice system. Take for example the Nirbhaya case<sup>91</sup>, also referred to as the Delhi Gang Rape, gained attention in the media and on social media. The rape victim Nirbhaya and a male companion boarded a bus headed towards Dwarka. Six people, including the bus driver, were on board. When other passengers began interrogating the couple about their relationships and the bus driver veered off the expected path, the pair began

<sup>90</sup> SK Malik, Justice more complete, *The Indian Express* 17<sup>th</sup> June 2022 at pg-9

<sup>91</sup> Soumya Swaroop, Death Penalty- Nirbhaya Case, *Legal Humming* (10<sup>th</sup> October 2020), <https://www.legalhumming.com/post/death-penalty-nirbhaya-case>

to have doubts about the other passengers. The passengers began hitting the male companion and also knocked him out with the iron rod as the couple reacted to the driver's explanation of the detour from the route. Nirbhaya was pulled to the bus's back. The attacker beat her severely and committed a rape on her. Within a day, the Delhi Police had captured all six suspects. Just before perpetrating this horrible crime, these suspects had robbed a carpenter named Ram Adhar. The suspects were put on trial after the charge sheet was filed. One of the suspects, Ram Singh, killed himself in his cell after the victims died out of guilt.

One of the suspects was a child, and his birth certificate and academic records provided evidence that he was a minor. The suspect will be tried under the Juvenile Justice Act of 2000, according to the Juvenile Justice Board. The accused was found guilty and given a sentence of 3 years in jail, including 8 months spent in detention while the case was being tried. The remaining accused were put on trial for rape, kidnapping, murder, and evidence destruction. They were found guilty of rape, murder, strange offences, and evidence destruction after being tried in a fast-track court. The death penalty was imposed on the defendants. The High Court received an appeal from the defendants. Due to the severity of the crime and the numerous protests held in the society, the Hon'ble High Court determined that the accused were guilty and that the case qualified as one of the rarest of rare cases. The Fast Track Court's ruling was upheld by the High Court. The accused appealed the decision to the Honourable Supreme Court because they were unhappy with the verdict. Later they were issued death warrants and the people were quite happy with the judgement now.

The next landmark case in which capital punishment was awarded is Dhananjay Chatterjee's case.<sup>92</sup> In this case the accused called Dhananjay Chatterjee alias Dhana was a security guard who was convicted for rape and murder of 18 year's school going girl. This case was termed as 'rarest of rare case' in which court has awarded him capital punishment. It is significant to note that the last words of the accused were 'I am innocent'. This created a lot of controversies and there was lot of criticism, as to whether the innocent was hanged till death. Coming down to the detail facts of the case, Dhananjay Chatterjee was an employee of security and investigating bureau and he was posted as a security guard in Anand apartments Calcutta. The victim was Hetal Parekh who was a school going girl and often complained on several occasions that the security guard used to tease her and frequently used to ask her to accompany with him for a movie. These incidents were reported to the employer multiple times. In furtherance of that, the security guard Dhananjay Chatterjee alias Dhana was transferred to another building by the employer. But the accused continued to carry on his duties in the same Anand apartment. On 5<sup>th</sup> march 1990, the victims father left the house for office and brother left for college and the victim for her school. She returned from school in the afternoon

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<sup>92</sup> Dhananjay Chatterjee Alias Dhana vs. State of W.B. (1994 (1) ALT Cri 388

around 1 Pm. In the mean time her mother also left for a nearby temple in the evening around 6 Pm, leaving the victim alone at home. In the meantime, taking the advantage of situation the accused enter the victim's apartment, repeatedly raped and killed her. When the victim's mother returned home, she repeatedly rang the bell but there was no answer. She raised the alarm and soon the door was broken. The victim was found in her bedroom in bloodied state. Her clothes were torned and there were marks of violence on her body parts. When the police did the investigation and when post-mortem was done the reason for death was confirmed as strangulation. It is pertinent to note that in this rarest of rare case there was no eye witness of the rape and murder and the conviction was solely based on circumstantial evidence and few evidences recovered from the place of accused. The trial court gave the verdict of capital punishment and this sentence was also confirmed by High court and Supreme Court as well. In this case the major defence taken by the accused was 'Plea of Alibi'. The appellant stated that he was at his village for his brother's marriage ceremony. But this plea was rejected because the Alibi in question was after the incident, perhaps there were many witnesses who corroborated the presence of accused at the victim's apartment. After serving 14 years in a prison the accused was hanged in 2004. According to Nata Mullic the last words uttered by accused were "Ami Nirdosh"<sup>93</sup>, which means "I am Innocent".

### **SUPREME COURT OF INDIA'S RECENT APPROACH ON DEATH PENALTY-**

Supreme Court has already reserved a category of 'rarest of rare case' where this death penalty is awarded in order to create a deterrent effect. But our legal system believes in reforming the individuals. Keeping in mind the Fundamental Right of Article 21 in Indian Constitution provided to every citizen and non-citizen and the basic human rights which every person is entitled to, the laws cannot be too harsh on the accused. The basic principle kept in mind is that we need to reform an individual not punish him because punishment might not every time lead to positive effects. It might make the convict more rebellious and then he might become more dangerous to the society as a whole. So, the reformatory theory of punishment is taken care of while giving judgements. Here we have seen that the recent incident of Hyderabad rape case, in which the so-called accused were encountered by the police at large. In spite of taking such rigorous recourse, the instances of rape and violence are not at all reduced, in fact they are increased. So, the author wishes to point out that capital punishment will not always work. A reformatory measure should be taken into consideration while dealing with the rarest of rare cases.

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<sup>93</sup> Akash Krishnan, The case of Dhananjay Chatterjee: a noteworthy lesson for the judiciary, (18<sup>th</sup> November 2021), <https://blog.ipleaders.in/case-dhananjay-chatterjee-noteworthy-lesson-judiciary/>



**CONCLUSION-**

Here the topic Capital punishment is a controversial one not only in India but in various parts of the world. Few countries allow capital punishment for certain specific offences, while few nations have completely abolished the capital punishment. While concluding the writing the author is trying to convey that, abolition of complete death penalty is not acceptable. Further author is of point of view that death penalty should be there because the accused should bear the same pain which they had inflicted to the victim, but it should be for rarest of rare case like Nirbhaya case, Dhananjay Chatterjee's case. So, death penalty should not be abolished because it serves as a deterrent effect, which means it sets an example for other criminals and affects social change. The society can be made safer by the death penalty since those who have been convicted of a crime are unable to commit another one. The deterrent theory of punishment also signifies deterrent impact of certain punishments on the society at large. It is to be noted that for heinous crimes like the Rape, brutal murder, acid throwing cases etc the death penalty is highly recommended. In India various statistical data shows that the instances of heinous crimes are increasing day by day. In such a situation it is to be noted that death penalty is highly recommended at large. In Indian context the death penalty is not perfectly recommended because the social and economical conditions of this nation don't favour so. In the third world country like India where people struggle for bread and butter how we can apply the reformatory theory when there is fight for survival itself. On the contrary few European countries those who have abolished capital punishments have far better socio-economic conditions than ours. So, the author strongly recommends abolition of capital punishment in general. But in rarest of rare case and the cases which crosses all the brutalities and are extremely heinous, in these circumstances the author favours capital punishment.